TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~871.~~ 167

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, AND SAMUEL W. JACKSON, EXECUTORS OF ALONZO C. PAIGE, DECEASED, APPELLANTS,

vs.

DAVID BANKS, JUNIOR, CHARLES BANKS, AND A. BLEECKER BANKS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 9, 1870.

SUPREM COURT OF THE UNITED STATES.

No. 371.

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1 The President of the United States of America to David Banks, jr., Charles Banks, & A. Bleecker Banks, greeting:

You are hereby commanded that you and each of you personally appear before the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of March, A. D. 1869, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, exe'r, &c., of Alonzo C. Paige, dec'd, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 30th day of Jan'y, in the year one thousand eight hundred and sixty-nine,
2 and of the independence of the United States of America the ninety-third.

KENNETH G. WHITE,
Clerk.

DOUGLASS CAMPBELL, *Sol'r:*

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of March, 1869, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

Personally served on David Banks, jr., and Cha's Banks.
Feb. 4, '69.

R. MURRAY, *S. D. M.*

(Enclosed:) U. S. circuit court. E. W. Paige, C. K. Paige, & Sam'l W. Jackson, ex'rs, &c., vs. David Banks, jr., Cha's Banks, & A. Bleecker Banks. Subpœna.

I hereby depute A. B. Haugh to serve the within writ.

R. MURRAY,
U. S. Marshal, S. D. of N. Y.

Filed Feb. 4, '69. E. 25.

3 The President of the United States of America to David Banks, jr., Charles Banks, and A. Bleecker Banks, greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of March, A. D. 1869, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Edward Winslow Paige, Clara K. Paige, & Samuel W. Jackson, exe'rs, &c., of Alonzo C. Paige, deceased, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 30th day of January, in the year one thousand eight hundred and sixty-nine, and of the independence of the United States of America the ninety-third.

KENNETH G. WHITE,
Clerk.

4 DOUGLASS CAMPBELL, *Sol'r:*

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of March, 1869, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

(Endorsed:) U. S. circuit court. Edward Winslow Paige, & others, ex'rs, ag'st Charles Banks, & others. Filed Feb'y 11, '69.

On the eighth day of February, 1869, I personally served the within writ upon the within named A. Bleecker Banks, at Albany, by shewing him the same and leaving a copy thereof with him.

EDWARD DODD,
U. S. Marshal.
By ARCH. YOUNG,
Deputy.

Marshals fees, $11 00.

The within is a true copy of the original writ sued out of the circuit court of the United States for the southern district of New York.

KENNETH G. WHITE,
Clerk, &c.

5 Circuit court of the United States for the southern district of New York.

To the judges of the circuit court of the United States of America for the southern district of New York in the second circuit:

Edward Winslow Paige, Clara K. Paige, and Samuel [W.] Jackson, all of the city of Schenectady, in the State of New York, bring this their bill, as executors of the last will and testament of Alonzo C. Paige, late of the said city of Schenectady, against David Banks, jr., Charles Banks, and A. Blee'ker Banks, said David Banks, jr., & Charles Banks, of the city of New York, and A. Blee'ker Banks, of the city of Albany, in the State of New York.

And thereupon your orators complain and say that the said Alonzo C. Paige, in his lifetime was, from some time in the year one thousand eight hundred and twenty-eight, to some time in the year one thousand eight hundred and forty-five, the reporter of the court of chancery of the State of New York, and as such composed, and was the author of eleven books or volumes of reports of cases argued and determined in the said court, which books or volumes are commonly known as "Paige's Chancery Reports," the said books or volumes forming together a
6 connected series of reports for the time that the said Alonzo C. Paige was the reporter of said court.

That the first of the said eleven books or volumes was printed and published in the year one thousand eight hundred and thirty, and that before the printing and publishing thereof, that is to say, on the seventh day of October, in the year one thousand eight hundred and twenty-eight, the said Alonzo C. Paige entered into an agreement with William Gould, then of the city of Albany, but now deceased, and David Banks, then and still of the city of New York, which said William Gould and David Banks were then engaged in business in the said cities of New York and Albany as partners under the firm name of Gould and Banks in the publishing and vending of law books, for the sale of the copyright of the said first volume of said reports, and of such subsequent

volumes of said reports as should thereafter be composed and written by the said Alonzo C. Paige during the period of five years from the twenty-eighth day of April, one thousand eight hundred and twenty-eight, which said agreement was signed by the said Alonzo C. Paige and also by the said William Gould, and David Banks, and which is in the words and figures following, that is to say:

"Articles of agreement made this 7th day of October, in the year 1828, between Alonzo C. Paige, of the city of Schenectady, of the one part, and William Gould, and David Banks of the other part, wit-
7 nesseth: That the said Alonzo C. Paige, (the said William Gould and David Banks performing the agreements to be done and performed as hereinafter contained,) during the term of five years from the twenty-eighth day of April last if the said Alonzo shall so long remain reporter of the court of chancery, shall and will furnish the said Gould and Banks, in manuscript, the reports of the said court for publication, and that the said Gould and Banks shall have the copyright of said reports to them and their heirs and assigns forever.

"And the said William Gould and David Banks covenant and agree to and with the said Alonzo that they will publish said reports in royal octavo volumes of between six and seven hundred pages, on paper and type suitable for such a work; that they will deliver to the said Alonzo twelve copies free of expense; that they will sell said reports to the members of the bar of New York at a sum not exceeding six dollars per volume, bound in calf, for each volume they shall so sell within one year next subsequent to the publication of such volume.

"And the said Gould and Banks agree to pay to the said Alonzo one thousand dollars per volume for every volume they shall publish, and at the same rate for less than a volume, within six months after the publication of each volume.

"It is understood that the said Alonzo C. Page is to read and
8 correct the proof-sheets of said reports as the same are furnished him.

"In witness whereof the said parties have hereunto set their hands and seals the day and year first above-written.

"A. C. PAIGE. [L. S.]
"D. BANKS. [L. S.]
"WILLIAM GOULD. [L. S.]

"Sealed and delivered in presence of—
"A. W. BELL, as to D. Banks, A. C. Page, and William Gould.

"Signed, sealed, and delivered in presence of—
"G. M. DAVISON."

As by the said agreement, now in possession of your orators and ready to be produced and proved, as this honorable court shall direct, will fully appear.

And your orators further say that, on the twenty-third day of December, one thousand eight hundred and thirty-three, the said Alonzo C. Paige entered into an agreement with the aforesaid William Gould and David Banks, and Anthony Gould, now deceased, which said Anthony Gould had, in the year one thousand eight hundred and thirty, purchased an interest in the business of William Gould and David Banks, and which said William Gould, David Banks, and Anthony Gould were then engaged in business in the said cities of New York and Al-

bany as partners, under the firm-name of Gould, Banks & Co., in the publishing and vending of law books, for the sale of the copyright of such subsequent volumes of the aforesaid reports as should thereafter be composed and written by the said Alonzo C. Paige, during the period of five years from the twenty-eighth day of April, one thousand eight hundred and thirty-three; which said agreement was signed by the said Alonzo C. Paige and also by the said William Gould, David Banks, and Anthony Gould, and which is in the words and figures following, that is to say:

"Articles of agreement, made this 23d day of December, in the year of our Lord one thousand eight hundred and thirty three, between Alonzo C. Paige, of the city and county of Schenectady, of the one part, and William Gould, David Banks, and Anthony Gould, of the other part, witnesseth: That the said Alonzo C. Paige, in case the said William Gould, David Banks, and Anthony Gould perform the covenants and agreements to be done and performed by them, as hereinafter mentioned, during the term of five years from the twenty-eighth day of April last past, if the said Alonzo C. Paige so long remain reporter of the court of chancery, shall and will furnish the said William Gould, David Banks, and Anthony Gould, in manuscript, the reports of the said court for publication, and that the said William Gould, David Banks, and Anthony Gould shall have the copyright of said reports to them and their heirs and assigns forever. And the said William Gould, David Banks, and Anthony Gould do covenant and agree to and with the said Alonzo C. Paige that they will publish said reports in royal octavo volumes of between six and seven hundred pages, on paper and type suitable for such a work; that they will deliver to the said Alonzo C. Paige twelve copies free of expense; that they will sell said reports to the members of the bar of the State of New York at a sum not exceeding six dollars per volume, bound in calf, for each volume they shall so sell within one year next subsequent to the publication of such volume. And the said William Gould, David Banks, and Anthony Gould agree to pay to the said Alonzo C. Paige twelve hundred dollars per volume for each and every volume they shall publish, and at the same rate for less than a volume, within three months after the publication of each volume.

"It is understood that the said Alonzo C. Paige is to read and correct the proof-sheets of said reports as the same are furnished to him. It is also understood that the said William Gould, David Banks, and Anthony Gould may have a credit of six months, after the publication of each volume or part of a volume, for the payment of the said sum so agreed to be paid by them, upon payment to the said Alonzo C. Paige of interest upon the said sum, from and immediately after the expiration of three months from said publication until the same shall be fully paid.

"In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

"WILLIAM GOULD. [L. S.]
"D. BANKS. [L. S.]
"ANTHONY GOULD. [L. S.]
"ALONZO C. PAIGE. [L. S.]

"Sealed & delivered in presence of—
'ANTHONY W. BELL, as to David Banks.
"JAMES HENRY, as to W'm and A. Gould.
The words 'or part of a volume' erased before signing & sealing.
"B. M. MUMFORD, as to Alonzo C. Paige."

As by the said agreement, now in the possession of your orators and ready to be produced and proved as this honorable court shall direct, will fully appear.

And your orators further say that, on the twenty-third day of September, one thousand eight hundred and thirty-eight, the said Alonzo C. Paige entered into an agreement with the aforesaid William
12 Gould, David Banks, and Anthony Gould, which three latter were then still partners, as on the twenty-third day of December, one thousand eight hundred and thirty-three, for the sale to them of the copyright of such subsequent volumes of the aforesaid reports as should thereafter be composed and written by the said Alonzo C. Paige during the period of five years from the twenty-eighth day of April, one thousand eight hundred and thirty-eight, which said agreement was signed by the said Alonzo C. Paige, and also by the said William Gould, David Banks, and Anthony Gould, and which is in the words and figures following, that is to say:

"Articles of agreement made this 23d day of September, in the year of our Lord one thousand eight hundred and thirty-eight, between Alonzo C. Paige, of the city and county of Schenectady, of the one part, and William Gould, David Banks, and Anthony Gould,

perform
the covenants and agreements to be done and performed by them as hereinafter mentioned during the term of five years from the
13 twenty-eighth day of April last past, if the said Alonzo C. Paige so long remains reporter of the court of chancery, shall and will furnish the said William Gould, David Banks, and Anthony Gould, in manuscript, the reports of the said court for publication, and that the said William Gould, David Banks, and Anthony Gould shall have the copyright of said reports to them and their heirs and assigns forever. And the said William Gould, David Banks, and Anthony Gould do covenant and agree to and with the said Alonzo C. Paige, that they will publish said reports in royal octavo volumes of between six and seven hundred pages, on paper and type suitable for such a work; that they will deliver to the said Alonzo C. Paige twelve copies free of expense; that they will sell said reports to the members of the bar of the State of New York, at a sum not exceeding six dollars per volume, bound in calf, for each volume they shall so sell within one year next subsequent to the publication of such volume; and the said William Gould,
14 David Banks, and Anthony Gould agree to pay to the said Alonzo C. Paige thirteen hundred and seventy-five dollars per volume for each and every volume, they shall publish, and at the same rate for less than a volume, within three months after the entire manuscript for each volume is ready for the printer of the said William Gould, David Banks, and Anthony Gould. It is understood that the said Alonzo C. Paige is to read and correct the proofs-sheets of said reports as the same are furnished him.

"In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

"A. C. PAIGE. [L. S.]
"WILLIAM GOULD. [L. S.]
"D. BANKS. [L. S.]
"ANTHONY GOULD. [L. S.]

"Sealed and delivered in the presence of—(interlineations of words sell each,' and 'ready for,' before execution.)

"WILLIAM GOULD, witness to all except D. Banks."

As by the said agreement, now in the possession of your orator, and ready to be produced and proved as this honorable court shall direct, will fully appear.

15 That, under the above-recited agreement, dated the seventh day of October, one thousand eight hundred and twenty-eight, the said Alonzo C. Paige, from time to time, furnished to the said Gould and Banks the manuscript of three volumes of said reports, prepared by him, and severally numbered volumes one, two, and three, in order that the same might be printed and published; and that, under the agreement above recited, dated the twenty-third of December, one thousand eight hundred and thirty-three, the said Alonzo C. Paige, from time to time, furnished to the said William Gould, David Banks, and Anthony Gould, composing the firm of Gould, Banks & Co., the manuscript of three volumes of said reports, prepared by him, and severally numbered volumes four, five, and six, in order that the same might be printed and published; and that, under the above-recited agreement, dated the twenty-third day of September, one thousand eight hundred and thirty-eight, the said Alonzo C. Paige, from time to time, furnished to the said William Gould, David Banks, and Anthony Gould,

16 composing the firm of Gould, Banks, & Co., the manuscript of three volumes of said reports, prepared by him, and severally numbered volumes seven, eight, and nine, in order that the same might be printed and published; and that the said Gould and Banks printed and published the said three several volumes, numbered respectively volume one, two, and three, and the said William Gould, David Banks, and Anthony Gould, composing and acting as the firm of Gould, Banks & Co., printed and published the said six several volumes, numbered respectively volumes four, five, six, seven, eight, and nine; and that the said Banks and Gould, as to the first three volumes, and the said Banks, Gould & Co., as to the subsequent and succeeding six volumes, took out copyrights of each volume in their own names, as proprietors thereof, under and by virtue of the acts of Congress on the subject of copyrights, in force at the times of the publication thereof, and in conformity to the said acts of Congress, as your orators are informed

17 and believe, did, or caused to be done, every act and thing on their part, which was required in and by the said acts of Congress to be done, in order to secure and take out the copyrights of the said volumes, for their own benefit as proprietors thereof, whether such acts and things were required, in and by the said act of Congress, to be be done before the publication of the book or volumes, or after the publication thereof; whereby the said Gould and Banks, in respect to the first three volumes, and William Gould, David Banks, and Anthony Gould, acting as the firm of Gould, Banks & Co., in respect to the next six volumes, became as such, proprietors, entitled to the benefit of such copyright, under the said acts of Congress, for the term of fourteen years, as to the said first three volumes, from the time of the recording of the titles of the said first three volumes respectively, and for the term of twenty-eight years as to the succeeding six volumes, to be computed from the time of recording the titles thereof, respectively, in the clerk's office of the southern district of New York, in whose office the

18 titles of the said several nine volumes were deposited and recorded.

That the said several times of the depositing of the said titles in the office of the said clerk, and of the recording of the same by the said clerk, were as follows, respectively:

Volume one, January fifth, one thousand eight hundred and thirty.

Volume two, November fourteenth, one thousand eight hundred and thirty-one.

Volume three, April 11th, 1833.
" four, Jan'y 9th, 1835.
" five, May 24th, 1836.
" six, August 21st, 1838.
" seven, December 7th, 1839.
" eight, March 16th, 1842.
" nine, June 10th, 1843.

And that the said Alonzo C. Paige was, at the several dates above-mentioned, a citizen of the United States, and a resident within the same, to wit, at the said city of Schenectady. That, as your orators are advised, and therefore allege, the copyright of each of the first three volumes of said reports, respectively, so as aforesaid, secured and taken out by the said Gould and Banks, expired, in respect to each of
19 the said volumes, at the end of fourteen years from the time of the recording of the titles of the said volumes, respectively, that is to say, their copyright, in respect to the first volume, expired January 5, 1844; in respect to the second volume, expired November 14th, 1845; and in respect to the third volume, expired April 11th, 1847.

That the copyright of each of the succeeding four volumes of said reports respectively so as aforesaid taken out by the said Gould, Banks & Co., expired in respect to each of the said volumes at the end of twenty-eight years from the time of the recording of the titles of the said volumes respectively; that is to say, as to the fourth volume, January 9th, 1863; as to the fifth volume, May 24th, 1864; as to the sixth volume, Aug. 21st, 1866; as to the seventh , Dec. 7th, 1867.

That at the several times when the copyright of the said Gould and Banks, and the said Gould, Banks & Co. expired in respect to the said volumes, the said Alonzo C. Page was living, and was a citizen of the United States, and a resident therein, that is to say, at the city
20 of Schenectady aforesaid, where he continued to reside until the 31st day of March, 1868, when he died, leaving four children, that is to say, Clara K. Paige, Harriet B., wife of Douglass Campbell, Caroline Paige, and Edward Winslow Paige, his next of kin; that he left a last will and testament, by which he appointed your orator' executors thereof; and that, on the 11th day of April, 1868, said will was admitted to probate by the surrogate of the county of Schenectady, State of New York, and letters testamentary thereupon duly granted and issued by said surrogate, to whom the granting thereof by the laws of New York belonged, to your orators, as by said letters in the possession of your orator' and ready to be produced and proved as this honorable court shall direct, will more fully and at large appear.

And your orators further show that, by the law concerning copyrights, as it stood on the 7th of October, 1828, when the afore-recited agreement was made between the said Alonzo C. Paige and the said Gould and Banks, the original term granted for a copyright was only four-
21 teen years, with the privilege of renewal for fourteen years further; and that subsequently, that is to say, in the year 1831, the law was so amended as to give an original term of twenty eight years, with the privilege of a renewal for fourteen years further; that the said Alonzo C. Paige always claimed that he was entitled to the fourteen years elongation of the original term of the copyright of the first three volumes of said reports, but that he was unwilling during his lifetime to engage in the necessary litigation to obtain the profits of such terms

withheld from him by his publishers, and that their collection is now barred by the lapse of time.

And your orators further complain and say that, upon the expiration of twenty-eight years after the first taking out and securing of the copyright of the first volume of said reports by the said Gould and Banks, as proprietors thereof as aforesaid, the said Alonzo C. Paige did take out an extension or renewal of the copyright thereof in his own name, as author thereof, in the northern district of New York, in which district he then resided, under and by virtue of the acts of Congress on
22. the subject of copyrights in force at that time, and in conformity to the said acts of Congress, as your orators are informed and believe, did, or cause to be done, every act and thing on his part which was required in and by the said acts of Congress to be done, in order to secure and take out the extension or renewal of the copyright of the said volume, whether said acts and things were required in and by the *the* said acts of Congress to be done before the expiration of the original copyright, or after the expiration thereof, whereby he, the said Alonzo C. Paige, became, as such author, entitled to the benefit of such extension or renewal of said copyright under the said acts of Congress in respect to said first volume, with the sole right of publishing and vending, or vending the same, for the term of fourteen years from the time of the expiration of the first copyright secured thereon, which time of said expiration was on the fifth day of January, one thousand eight hundred and fifty-eight; that, at that time, the said Alonzo C. Paige was
23 living, and a citizen of the United States, and resident thereof, to wit, at Schenectady aforesaid.

That your orators are informed and believe, and therefore, so charge the facts to be that the said David Banks, j'r, Charles Banks, and A. Bleecker Banks, comprising the said firm of Banks & Brothers, and acting as such partners as aforesaid, notwithstanding the expiration of the copyright for twenty-eight years claimed by them as proprietors of the said first volume of reports, have continued, in respect to said first volume of reports, to publish and vend or to vend the same in each and every year after the expiration of said copyright for twenty-eight years, and after the extension or renewal of the same, taken out and secured by said Alonzo C. Paige, on the fifth day of January, 1858, and that they are now engaged in publishing and vending, or in vending the same, they, the said David Banks, j'r, Charles Banks, and A. Bleecker Banks as partners as aforesaid, from time to time, receiving from such
24 sales large sums of money, but what sums in particular and how much in the ag'regate is wholly unknown to your orators, and that they, the said David Banks, j'r, Charles Banks, and A. Bleecker Banks as such partners as aforesaid, assume and act on such assumption, that by the agreement above recited, made on the 7th day of October, 1828, the said Alonzo C. Paige assigned to the said William Gould and David Banks all right and interest in the extension or renewal of the copyright of said first volume including the extension or renewal after the expiration of the first twenty-eight years granted to the author by act of Congress of the year 1831 aforesaid, and under which act said Alonzo C. Paige, had secured an extension or renewal as aforesaid, whereas your orators are advised and do insist, and submit that such is not the true construction and legal effect of the said agreement, and that all such pretences, actions, and doings of the said David Banks, j'r, Charles Banks, and A. Bleecker Banks are contrary to law, and a
25 violation of the rights of the said Alonzo C. Paige in his lifetime and of your orators, as executors as aforesaid, since his death.

And your orators, as executors as aforesaid, further show that the said Alonzo C. Paige, did in his lifetime notify the said David Banks, j'r, Charles Banks, and A. Bleecker Banks of his renewal of the copyright of said volume as aforesaid, and of their liability to account to him for publishing or vending any copies thereof after such renewal, by sending to them a letter, in the words and figures following, that is to say:

"SCHENECTADY, *Jan.* 13, 1858.

"Messrs. GOULD, BANKS, & Co.,

"GENT.: I have renewed the copyright of vol. 1, of Paige's Chancery Reports, the renewal became perfected by a publication of the of the title of the book, *of* the 5th of January, inst.

"By the renewal you will perceive that all right on your part to print, publish, or vend, this volume of my reports has ceased; you will, therefore, from henceforth refrain from printing, publishing, or vending the first volume of Paige's Chancery Rep., and if you have printed, published, or vended any copies of this volume, since the 5th of Jan. inst., you will be liable to me for so doing.

"I think also you are liable to compensate me for the sale of this volume for the last fourteen years, the period of the elongation of the original term of 14 years granted by the act of 1790. I intend to renew the copyright of the other volumes (2 to 9 inclusive) as the first term of 28 years expires. I am willing to receive a proposition for the purchase of all my interest in Paige's Chancery Reports.

"Yours respectfully,

"A. C. PAIGE."

That in answer thereto a letter was received by the said Alonzo C. Paige, on or about the third day of February, 1858, in the words and figures following, that is to say:

"NEW YORK, 3 *Feb.*, 1858.

"A. C. PAIGE, esq.,

"DEAR SIR: Yours of the 13th ult'o, has been handed to us by Messrs. Gould, Banks & Co., in relation to the publication and renewal of the copyright of your reports.

"In answer we have to state:

"First. That in so far as the printing, publishing*ing*, or vending the said reports on the part of Banks, Gould & Co. is concerned, we refer you to your contract with William Gould and David Banks of 7th Oct., 1828. From it you will perceive that your manuscripts were furnished them for publication without limit as to time, and that, therefore, whatever be your rights under the law of 1831, we have an unlimited license to publish and sell.

"In the second place, as to your rights to print, publish, and vend under the renewed copyright, we have to state for your government that where the entire interest in the copyright has been assigned, we consider the provisions of the act of 1831 to have been intended to ensure to the benefit of the assignee, and we, therefore, notify you that we shall take out all of the renewals of the said copyrights, and shall hold you liable for all damages consequent on any infringement of our rights.

"Yours respectfully,

"BANKS & ANDERSON,
"128 *Nassau St.*"

As by said letter, now in the possession of your orators and ready to be produced and proved as this honorable court shall direct, will fully appear. That such letter was written by the agents of Banks & Brothers and at their request.

That since said notification by said Alonzo C. Paige, the said firm of Banks & Brothers, have not desisted from, but, on the contrary, persist in publishing and vending, or in vending said first volume of reports, in defiance of the rights of said Alonzo C. Paige, in his lifetime, and of your orators, as his executors as aforesaid, and that they have now in hand in their store, and in the hands of their agents, a large number of copies of the said first volume of said reports.

And your orators further complain and show that, upon the expiration of twenty-eight years after the first taking out and securing
29 of the copyrights respectively, of the second, third, fourth, fifth, sixth, and seventh volumes of said reports, that is to say, as to the second volume, on or about the 14th day of November, 1859; as to the third volume, on or about the 11th day of April, 1861; as to the fourth volume, on or about the ninth day of January, 1863; as to the fifth volume, on or about the 24th day of May, 1864; as to the sixth volume, on or about the 21st day of August, 1866, and as to the seventh volume, on or about the 7th day of December, 1867, the said Alonzo C. Paige was living and a citizen of the United States and a resident thereof, and did take out an extension or renewal of the copyright of each of said volumes respectively, as author thereof, under and by virtue of the acts of Congress on the subject of copyright in force at each of those times aforesaid, and that in conformity to said acts of Congress, as your orators are informed and believe, each and every regulation was complied with, and each and ever' act was done which was required by the said acts of Congress to be done, in order to secure and take out the extension or renewal of the copyright of each
30 of the said volumes for the author thereof, whether said acts were required in and by the said acts of Congress to be done before the expiration of the original copyright of the said volumes respectively, or after the expiration thereof, whereby he, the said Alonzo C. Paige, became, as such author, entitled to the benefit of such extension or renewal of said copyright under the said acts of Congress in respect to the said second, third, fourth, fifth, sixth, and seventh volumes of said reports, with the sole right of publishing and vending, or vending the same for the term of fourteen years from the time of the extension or renewal of the copyright of each of said volumes respectively.

That, at each of the aforesaid times, said Alonzo C. Paige was living and a citizen of the United States and a resident thereof, to wit, at Schenectady aforesaid.

That your orators are informed and believe that the said David Banks, jr., Charles Banks, and A. Bleecker Banks, composing the firm of Banks & Brothers, and acting as such partners as aforesaid,
31 or some or one of them, complied with the regulations and performed the acts aforesaid, which, by the said acts of Congress regarding copyrights were required to be done, in order to secure and take out the extension or renewal of the copyright of each of the said volumes aforesaid from two to seven *enclusive*, for the author thereof, and that thereby, as your orators are informed and believe, the said Alonzo C. Paige, as such author, became entitled as aforesaid to the said extensions or renewals of the copyright of said volumes from two to seven inclusive.

And your orators further say that they are *are* informed and believe that the said David Banks, jr., Charles Banks, and A. Bleecker Banks, acting as partners as aforesaid, or some or one of them, in conforming with the regulations, and doing the acts aforesaid, as required by the acts of Congress in taking out the extensions or renewals aforesaid, claimed that such extension or renewals were for the firm of partnership of Banks and Brothers aforesaid, as proprietors of the copyright of said volumes, and that the extension or renewals aforesaid of the
32 volumes, from two to seven, inclusive, were actually taken out in the name of Banks & Brothers, as proprietors; that they claimed that, under the three contracts with the said Alonzo C. Paige, heretofore recited, they became, by assignment, entitled to the extension or renewal of the copyrights of all of said volumes for the further term of fourteen years after the expiration of the twenty-eight years for which said copyrights were originally granted.

That your orators are advised and believe that, by the true construction of said three contracts, heretofore recited, the right to the extensions or renewals secured to the author of books by the aforesaid act of Congress of 1831, for the term of fourteen years after the expiration of the twenty-eight years of the original copyright, was never parted with by the said Alonzo C. Paige; and as to those volumes, the copyright of which expired during his lifetime, the renewals or extensions thereof belonged to him exclusively, and that the said David
33 Banks, jr., Charles Banks, and A. Bleecker Banks, as partners as aforesaid, or some or one of them, in complying with the regulations and doing the acts required by act of Congress to such extensions as aforesaid, were acting as agents or trustees for said Alonzo C. Paige, and that the said firm of Banks & Brothers nominally held said renewals or extensions of said volumes, from two to seven, inclusive, in their own names, but actually as trustees of the said Alonzo C. Paige during his lifetime, and now hold the same as trustees for your orators, the executors of said Alonzo C. Paige as aforesaid.

That your orators are informed and believe, and therefore so charge the fact to be, that the said David Banks, jr., Charles Banks, and A. Bleecker Banks, composing said firm of Banks & Brothers, and acting as such partners as aforesaid, notwithstanding the expiration of the copyright for twenty-eight years claimed by them as proprietors of the said second, third, fourth, fifth, sixth, and seventh volumes of
34 said reports, and the renewal or extension thereof, secured and owned by said Alonzo C. Paige, as author thereof, have continued in respect to each of said six volumes to publish and vend, or to vend the same, and to publish and vend, or to vend all and every of the said six books or volumes in each and every year after the expiration of their several copyrights, up to the present time, for the joint benefit and account of them as such partners as aforesaid, they, as such partners, from time to time receiving from such sales large sums of money, but what sums in particular, and how much in the aggregate, is wholly unknown to your orators, they acting upon the assumption that they are entitled to the renewal or extension of the copyright of said volumes.

That your orators are advised and believe, and therefore insist that they as executors as aforesaid of the said Alonzo C. Paige, are entitled to an assignment of the legal title of the said extensions or renewals of the copyright of the said second, third, fourth, fifth, sixth,
35 and seventh volumes of said reports now standing in the name of the said Banks and Brothers, but equitably the property of

your orators as executors as aforesaid, and also to an account of all the sales of each and every of said volumes since the renewal of the copyright of each respectively.

And your orators further show that their agent and attorney, Douglass Campbell, has lawfully remonstrated with the said David Banks, Charles Banks, and A. Bleecker Banks, in respect to the matters aforesaid by sending them the following letters, as severally directed, in behalf of your orators, in the words and figures following, that is to say:

"NEW YORK, *Sept. 17th*, 1868.

"Messrs. David Banks, jr., Charles Banks, and A. Bleecker Banks, Banks & Brothers.

"GENTLEMEN: The executors of the late Alonzo C. Paige have requested me to communicate with you concerning the contract made between Judge Paige and the firm of Banks and Gould in 1828, and the publication of his reports under that contract.

36 "They are informed that the opinion held by Judge Paige was correct; that, as to the first three volumes of reports furnished under the contract of Oct. 7, 1828, Banks and Gould purchased only the copyright for the first term of fourteen years, and that the firm of Banks, Gould & Co. and Gould, Banks & Co., and since of Banks & Brothers, became liable to account to him for all of said volumes sold by them since the expiration of their copyright (for 14 years) of such volumes.

"In addition to this, Judge Paige took out the renewal or extension of the copyright of the first volume when it expired on the 5th of January, 1858, and his executors are informed that the firm of Banks and Brothers are liable for the publication and sale, or sale of this volume, since that time.

"They are also informed that Judge Paige, as author, was entitled to the renewals of the other volumes as the copyrights fell in, and that your firm, in taking them out, acted as agents or trustees for

37 Judge Paige; that the renewals enured to his benefit, and that your firm is liable to account to his executors for all sales since such renewals.

"They therefore think it proper to notify you that, in behalf of the estate, they claim from you a full account of such sales of the first three volumes of said reports during the latter fourteen years of the original period of copyright while you or either of you were members of the firm of Banks, Gould & Co., or Gould, Banks & Co., or Banks Brothers; and also a full account of the sales of the first volume of said reports since Jan'y 5th, 1858; and also a full account of the sales of vol. 2, 3, 4, 5, 6, and 7, respectively, since the renewals or extension of the copyright of each nominally taken out by you; and such accounts they instruct me to ask of you, as I now do, in their name, to the end that a just and legal settlement may be made of the amount which may be payable to the estate.

"Yours respectfully,

"DOUGLASS CAMPBELL.

"To David Banks, jr., Charles Banks, and A. Bleecker Banks, and Banks and Brothers."

That to such letters no answer has been received.

38 To the end, therefore, that the said David Banks, jr., Charles Banks, and A. Bleecker Banks may, if they can, show why your orators, as executors as aforesaid, should not have the relief hereby

prayed, and upon their several and respective corporal oaths, and according to the utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively requested to answer; that is to say:

First. Have not David Banks, jr., Charles Banks, and A. Bleecker Banks, as partners, continually, since the fifth of January, 1858, been engaged in publishing and vending, or in vending the said first volume of the said Paige's Reports?

Second. How many copies of the said first volume of Paige's Reports, since the fifth day of January, 1858, have been sold by Banks and Brothers, or by their agents, and for what price per volume, and how
39 much in the whole from and for such sales has been received by the said Banks and Brother, and how much money is yet due and outstanding to the said Banks and Brothers on account of such sales?

Third. How many copies of said first volume of said reports are now in the possession of Banks and Brothers unsold, and how many copies are in the possession of the associates and agents of Banks and Brothers, specifying particularly the names and places of residence of each agent and associate, and the number of copies in the hands of each, and what interest respectively have such agents or associates in such copies?

Fourth. Have not the said David Banks, jr., Charles Banks, and A. Bleecker Banks, as partners, and acting as Banks and Brothers, done or caused to be done, all the things, which, by the acts of Congress concerning copyrights, were required to secure the extension or renewal of the copyright of the said second, third, fourth, fifth, sixth, and seventh volumes of said reports, and were not said renewals or
40 extensions taken out, and do they not now stand in their name, or in the name of Banks and Brothers?

Fifth. Have not the said David Banks, jr., Charles Banks, and A. Bleecker Banks, as partners since the expiration of the term of twenty-eight years from the date of the first recording of the titles of the said second, third, fourth, fifth, sixth, and seventh volumes respectively of said reports, continued to publish and vend, and do they not now publish and vend, or vend the said volumes, and each and every of them for their joint account and benefit?

Sixth. How many copies of the said second volume, since the 14th of November, 1859; how many copies of the said third volume since the 11th of April, 1861; how many copies of the said fourth volume since the 9th of January, 1863; how many copies of the said fifth volume since the 24th of May, 1864; how many copies of the sixth volume since the 21st of August, 1866; and how many copies of the said seventh
41 volume since the 7th of December, 1867, have been sold by Banks and Brothers, or their agents, and for what price per volume, and how much in the whole, from and for such sales, has been received by the said Banks & Brothers, and how much money is yet due and outstanding to the said Banks and Brothers on account of such sales?

Seventh. How many copies of the said second, third, fourth, fifth, sixth, and seventh volumes of said reports, stating specifically as to each volume, are now in the possession of Banks and Brothers, and in possession of their agents and associates, unsold, specifying particularly the names and places of abode, and the number of copies in the hands of each, and what interest respectively have such agents or associates in such copies?

And your orators do hereby pray that the said David Banks, jr., Charles Banks, and A. Bleecker Banks may come to a just and full account in the premises, and may pay to your orators, as executors as aforesaid, what has been received by them, or either of them, as
42 such partners as aforesaid, or otherwise, from and for all the sales of the said first seven books or volumes of the said Paige's Reports, and of every and each of the said books or volumes made by the said David Banks, jr., Charles Banks, and A. Bleecker Banks, or either of them, since the time of the expiration of the original or primary copyright of the said Gould and Banks, the said Banks, Gould & Co., or the said Banks and Brothers in the said several books or volumes respectively; and may also pay to your orators all the damages sustained by the said Alonzo C. Paige in his lifetime, and by your orators as executors as aforesaid, since his death in the premises, to be ascertained by a commissioner of this court, or by a jury, as this honorable court may direct; and that the said David Banks, jr., Charles Banks, and A. Bleecker Banks, and their agents and associates, when discovered, may be ordered to deliver up to your orators all the unsold copies of the said several seven books or volumes in their hands, or in the hands of any one of them, and that they, and each of them, their agents, asso-
43 ciates, and confederates, and each of them, may be enjoined and restrained from any further violation of the copyright of your orators, as executors as aforesaid, in the premises, by printing, publishing, or vending any copy or copies of the said first seven books or volumes of "Paiges Reports," or of any or either of said books or volumes, or in any other way, and that the said David Banks, jr., Charles Banks, and A. Bleecker Banks, composing and acting as the firm of Banks and Brothers, may be ordered and compelled to assign to your orators, as executors as aforesaid, the extensions or renewals of the copyrights of the said several books or volumes of reports numbered from two to seven, both inclusive, and each and every of them now standing in the name of Banks and Brothers, but actually belonging to your orators, as such executors as aforesaid, and that your orators, as such executors as aforesaid, may have such other and further relief, or such other relief in the premises to which they may be equitably entitled.

Your orators, as executors as aforesaid, pray that your honors will
44 grant to them a writ of injunction for the purposes aforesaid, according to the practice of this court, restraining the said David Banks, jr., Charles Banks, and A. Bleecker Banks, and each of them, their servants, agents, and associates from all future and further violations of their said copyright as such executors of the said Alonzo C. Paige; and also that your honors will grant to them a writ of subpœna, requiring the defendants, David Banks, jr., Charles Banks, and A. Bleecker Banks, and each of them, to appear and answer according to the practice of this court, and to abide by, stand to, and perform the orders of this court in the premises.

The defendants, David Banks, jr., Charles Banks, and A. Bleecker Banks are each required to answer each and every of the above interrogations, numbered from first to seventh, both inclusive.

DOUGLASS CAMPBELL,
Solicitor for Complainants.

45 UNITED STATES OF AMERICA,
Northern District of New York, ss:

On this 22 day of January, 1869, before me personally appeared Ed-

ward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, the above-named complainants, who, being by me duly severally sworn, did each for himself say that he had read, or had heard read, the foregoing bill of complaint by them, and each of them subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on their information and belief, and as to those matters he believes it to be true.

CLARA K. PAIGE.
S. W. JACKSON.
E. W. PAIGE.

Subscribed and sworn before me, this 22d day of January, 1869.

SAM'L T. BENEDICT,
U. S. Commissioner for the Northern District of New York.

46 (Endorsed:) C. C. U. S., S. D. N. Y. Edward Winslow Paige and others against David Banks, j'r, and others. Bill of complaint. Douglass Campbell, solicitor. Filed Jan'y 30, '69.

47 U. S. circuit court, southern district of New York.

EDWARD WINSLOW PAIGE & O'RS
vs.
DAVID BANKS, J'R, & OTHERS.

SIR: Please to take notice that I have been retained by, and appear for, the defendants in the above-entitled cause.

Dated M'ch 1, 1869. Y'rs, &c.,

E. E. ANDERSON,
Def'ts Att'y.

To KENNETH G. WHITE, esq., *Clerk, &c.*

48

49 Circuit court of the United States for the southern district of New York.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, executors of Alonzo C. Paige, deceased,
against
DAVID BANKS, JR., CHARLES BANKS, & A. Bleecker Banks.

The above-named defendants, for answer to the complaint in this action, respectfully show to this court—

That they admit the allegations contained in plaintiffs' bill of complaint, from folio 1 (one) to folio 24 (twenty-four,) except that for greater certainty they prefer to refer to the original agreements made by Alonzo C. Paige, deceased, which they will produce at the hearing.

In regard to the allegations contained in the said bill from folio 24 (twenty-four) to folio 36 (thirty-six,) ending with the words "years further," the defendants have no knowledge or information sufficient to form a belief whether the same are true, and therefore controvert the same.

50 These defendants deny that the said Alonzo C. Paige always claimed that he was entitled to the fourteen years elongation of

the original term of the copyright of the first three volumes of the said reports. Otherwise defendants allege that the said Paige sometimes asserted that such a construction might be given to his contracts, but that he never pretended that such had been the intention of the parties to the contracts at the time of the making of the same.

As to the allegations contained in folios 37, (thirty-seven,) 38, (thirty-eight,) and 39, (thirty-nine,) to the word "aforesaid" in folio 40, (forty,) these defendants have no knowledge or information sufficient to form a belief whether the same are true, and therefore controvert the same.

As to the allegations contained in folios 40, (forty,) 41, (forty-one,) 42, (forty-two,) 43, (forty-three,) and 44, (forty-four,) to the words "since his death," these defendants admit that, since the month of January, 1858, they have printed and published copies of the first volume of Paige's Reports, but they deny that plaintiffs have any right or title to the said volume, or to any copyright or renewal copyright therein, or have
51 the right in any manner to interfere with defendants in the publication of the said volume. Defendants admit the writing and receipt of the two letters contained in the bill from folio 46 (forty-six) to folio 51 (fifty-one,) and defendants allege that, from the time when the said letter, written by their attorneys, in 1858, was received by the said Alonzo C. Paige to the time of his death, in 1868, the said Paige never took or caused to be taken any steps or proceeding to perfect or complete his title to a copyright or renewal of a copyright of, in, or to any of the said volumes of Paige's Reports, from one to seven, both inclusive; nor did the said Paige ever complain or remonstrate with defendants for publishing and vending the said volumes, though the fact of such publication and vending was always fully known to the said Paige.

As to the allegations contained in the complaint from folio 53 (fifty-three) to folio 61 (sixty-one,) at the words "originally granted," these defendants deny the same, except that they admit that, on the 15th day of May, 1858, they filed a copy of the title page of the second
52 volume of Paige's Reports in the office of the clerk of the southern district of New York, and on the 21st day of October, 1860, they filed a copy of the title page of the third volume of Paige's Reports in the office of the said clerk. But these defendants allege that in filing such titles, and in each and every act or acts done by the defendants in the premises they were acting on behalf of themselves only, and they deny that they ever were, or acted as, the agents or trustees of the said Alonzo C. Paige, or that they ever were, or became, trustees for the plaintiffs.

These defendants admit the allegations contained in folios 69 (sixty-nine) to folio 74 (seventy-four,) at the words "Banks and Brothers," to be true.

These defendants deny that the said Alonzo C. Paige, or the plaintiffs, or any person or persons on his or their behalf, ever had or acquired any right or title to either the second, third, fourth, fifth, sixth, or seventh volume of Paige's Reports, or to any copyright or renewal copyright in either of the said volumes, or that they or either of
53 them have the right in any manner to interfere with defendants in the publication of either of the said volumes.

And for another and further defence to the matters set forth in the plaintiffs' bill of complaint, these defendants allege that part of the plaintiffs' alleged cause of action did not accrue within six years next prior to the time of the commencement of this action.

These defendants therefore pray that plaintiffs' bill of complaint in this suit may be dismissed with costs.

E. E. ANDERSON,
Sol'r for Def'ts, 54 Wall St.

CITY AND COUNTY OF NEW YORK, *ss:*

CHARLES BANKS, being duly sworn, says:

That he is one of the defendants in this action; that the foregoing answer is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and that as to those matters he believes it to be true.

CHARLES BANKS.

Sworn to before me this 19th day of May, 1869.

FREDERICK H. MARR,
Notary Public, City & County of New York.

54 (Endorsed:) C. C. U. S., S. D. N. Y. Edward Winslow Paige and others against David Banks, jr., and others. Answer. E. E. Anderson, def'ts sol'r, 54 Wall st. Filed May 20, '69.

55 Circuit court of the United States for the southern district of New York.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, executors of Alonzo C. Paige, deceased,
ag'st
DAVID BANKS, JR., CHARLES BANKS, AND A. Bleecker Banks.

The replication of Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, executors of Alonzo C. Paige, deceased, complainants to the answer of David Banks, jr., Charles Banks, and A. Bleecker Banks, defendants.

These repliants, saving and reserving unto themselves all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient to the law to be answered unto, and that the said answer of the said defendants is uncertain,
56 untrue, and insufficient to be replied unto by these repliants, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

DOUGLASS CAMPBELL,
Solicitor for Conplainant.

(Endorsed:) Circuit court of the U. S., S. dist. N. Y. Edward Winslow Paige and others ag'st David Banks, jr., and others. Replication. Douglass Campbell, solicitor for complainants, 262 B'way.

Service of a copy of within replication admitted.
May 24, 1869.

E. E. ANDERSON,
Sol'r Def'ts.

Filed May 25, '69.

REC. 371—2

57 U. S. circuit court.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, exe'rs of Alonzo C. Paige, deceased,
versus
DAVID BANKS, JR., CHARLES BANKS, AND A. Bleecker Banks.

I hereby consent to the substitution in my place and stead of Messrs. Hilton, Campbell & Bell, as solicitors for the complainants herein.
New York, Oct. 28th, 1869.

DOUGLASS CAMPBELL.

U. S. circuit court.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, ex'rs of Alonzo Paige, deceased,
versus
DAVID BANKS, JR., CHARLES BANKS, & A. Bleecker Banks.

On reading and filing the consent of Douglass Campbell, esq'r, it is ordered that Messrs. Hilton, Campbell & Bell be substituted in his
58 place and stead as solicitors for the complainants herein.
New York, Oct. 28th, 1869.

(Endorsed:) U. S. circuit court. Edward W. Paige, Clara K. Paige, and Samuel W. Jackson, ex'rs of Alonzo C. Paige, deceased, versus David Banks, jr., Charles Banks, and A. Bleecker Banks. Consent and order of substitution of attorneys. Filed Nov. 3, '69.

59 To ,

District court of the United States for southern district of New York.

"Reports of Cases argued and determined in the Court of Chancery of the State of New York," by Alonzo Paige, &c., commonly known as "Paige's Reports."
Volumes 1 to 9, both inclusive, were copyrighted as follows:

Vol.	1.	By	Gould & Banks,	Jan. 5,	1830.
"	2.	"	Gould, Banks & Co.,		1831.
"	3.	"	do	do	"	1833.
"	4.	"	"	"	"	1835.
"	5.	"	"	"	"	1836.
"	6.	"	"	"	"	1838.
"	7.	"	"	"	"	1839.
"	8.	"	"	"	"	1842.
"	9.	"	"	"	"	1843.

What month and day, in the years above-mentioned, were the copyrights for volumes 2, 3, 4, 5, 6, 7, 8, and 9 taken out; and what are the dates of all the renewals, respectively, of said copyrights which appear on the records of your office?

For E. E. ANDERSON,
54 *Wall st.*

60 Clerk's office of the U. S. district court for the southern district of New York.

COPYRIGHTED.

June 3, 1857.	Vol.	I.	By Banks, Gould & Company.
Oct. 30, 1857.	"	I.	
May 15, 1858.	"	II.	
October 15, 1860.	"	III.	

"Reports of Cases argued and determined in the Court of Chancery of the State of New York," by Alonzo C. Paige, commonly known, as "Paige's Reports."

$10 00.

GEO. F. BETTS, *Clerk.*

OCT. 5TH, 1866.

(Endorsed:) U. S dist. c't. Search for E. E. Anderson, 54 Wall st. (As to copyrights, &c., of Paige's Reports.)

[5 c't int. rev. stamp affixed and canceled.]

61 To

Clerk of district court United States,
for northern district of New York.

"Reports of Cases argued and determined in the Court of Chancery of the State of New York," by Alonzo C. Paige &c., commonly known as "Paige's Reports."

Volumes 1 to 9, both inclusive, were copyrighted in the southern district of New York, as follows:

Vol. 1.	By	Gould & Banks,			Jan. 5, 1830.
" 2.	"	Gould,	Banks &	Co.,	Nov. 14, 1831.
" 3.	"	"	"	"	April 11, 1833.
" 4.	"	"	"	"	Jan. 9, 1835.
" 5.	"	"	"	"	May 24, 1836.
" 6.	"	"	"	"	Aug. 21, 1838.
" 7.	"	"	"	"	Dec. 7, 1839.
" 8.	"	"	"	"	M'ch 16, 1842.
" 9.	"	"	"	"	June 10, 1843.

What are the dates, respectively, of all the renewals of the said copyrights which appear on the records of your office, if any?

For ANDERSON & MARR,
54 *Wall st., N. Y. City.*

62 UNITED STATES DISTRICT COURT,
Clerk's Office, Northern District of New York, ss:

I, Millard P. Fillmore, clerk of said court do hereby certify that, pursuant to the foregoing request, I have searched in this office since 1830, for copyrights of Paige's Chancery Reports and find the following only:

Vol. 1, of Paige's Chancery Reports, entered Dec. 1, 1857, by Alonzo C. Paige, as author.

Vol. 2, of same, entered Oct. 15, 1845, by Alonzo C. Paige, as author.

In witness whereof I have hereunto affixed the seal of said court at the city of Buffalo, in said district, the first day of November, A. D. 1869.

[SEAL.] M. P. FILLMORE, *Clerk.*

(Endorsed:) U. S. dist. c't. N. D. N. Y. Search for Anderson & Marr, 54 Wall st. (As to renewals of copyrights of Paige's Chan. Reports.)

63 NORTHERN DISTRICT OF NEW YORK, *to wit:*

[SEAL.] Be it remembered that, on the first day of December, anno Domini 1857, Alonzo C. Paige, of the said district, has deposited in this office the title of a book, the title of which is in the words following, to wit: Reports of Cases argued and determined in the Court of Chancery of the State of New York. By Alonzo C. Paige, counsellor at law. Vol. 1. The right whereof he claims as author, in conformity with an act of Congress entitled, "An act to amend the several acts respecting copyrights."

AURELIAN CONKLING,
Clerk of the District.

(Endorsed:) Certificate of clerk of northern district, N. Y., of record of deposit of title of 1 Paige Ch. Rep. Dec. 1. 1857.

64 (Indorsed:) U. S. circuit court, S. dist. N. Y. C. W. Paige, &c. ag'st David Banks, j'r, &c. Proofs for complainants.

65 Circuit court of the United States, southern district New York.

E. W. PAIGE, CLARA K. PAIGE, AND SAMUEL L. JACKSON, ex'rs, &c.,
ag'st
DAVID BANKS, JR., CHARLES BANKS, AND A. BLEECKER BANKS.

We hereby admit the truth of the following facts, for the purposes of this suit, and waive proof thereof, and stipulate that, upon the hearing hereof and subsequent proceedings herein, these matters shall be taken as proved—

1st. That, under the agreement dated October 7th, 1828, referred to in complainant's bill, Alonzo C. Paige furnished the manuscript for three volumes of Reports to William Gould and David Banks, composing the firm of Gould and Banks, which were subsequently published by them, and are now known as vol's one, two, and three of Paige's Chancery Reports, and that the said Gould and Banks, mentioned in complainants' bill, took out copyrights of each volume, as pro-
66 prietors thereof, under and by virtue of the laws of the United States, and that the copyright of the first volume was taken out by the depositing of the title and recording of the same in the clerk's office of the southern district of New York, on January fifth, 1830, volume two, November fourteenth, 1831, and volume three, April eleventh, 1833.

2nd. That, under the agreement dated December 23rd, 1833, referred to in the complainants' bill, Alonzo C. Paige furnished the manuscript for three volumes of Reports to William Gould, David Banks, and Anthony Gould, composing the firm of Gould, Banks, & Co., which were subsequently published by them, and are now known as vol's four, five, and six, of Paige's Chancery Reports; and that, under the agreement dated September 23d, 1838, referred to in complainants' bill, Alonzo C. Paige furnished the manuscript for three volumes of reports to said Gould, Banks & Co., which were subsequently published by them, and are now known as vol's seven, eight, and nine, of "Paige's Chancery Reports;" and

67 that the said firm of Gould, Banks & Co., took out copyrights of each of said six volumes, as proprietors thereof, under and by virtue of the laws of the United States, and that the copyrights of the several volumes were taken out by the depositing and recording of the titles of the same in the clerk's office of the southern district of New York, as follows:

Vol. 4, Jan. 9, 1835.
Vol. 5, May 24th, 1836.
Vol. 6, August 21st, 1838.
Vol. 7, December 7th, 1839.
Vol. 8, March 16th, 1842.
Vol. 9, June 10th, 1843.

3rd. That Alonzo C. Paige was a native-born citizen of the United States, and from prior to 1828 until the time of his death, resided in Schenectady, New York; that he died March 31st, 1868, leaving his last will and testament duly admitted to probate, of which the complainants are executors.

4th. That, since the fifth day of January, 1858, the defendants
68 have vended copies of the first volume of Paige's Chancery Reports, published by them, and that profits have been made thereon; that all question of accounting shall be reserved until after the hearing and decision herein, without prejudice to any rights of the complainants by their not insisting upon answers to the interrogatories in their bill.

5th. That, since the expiration of the 28 years of the original copyright of volumes two, three, four, five, six, and seven of said Paige's Chancery Reports, the defendants have published and sold copies of each of said volumes, and made a profit thereon, except that they have never published any copies of volume seven.

Either party to be at liberty to correct errors in foregoing stipulation by proof, at any time before hearing.

June 10th, 1869.

E. E. ANDERSON,
Sol'r for Def'ts.
DOUGLASS CAMPBELL,
Solicitor for Complainants.

69

70 (Indorsed:) Circuit court of the United States. E. W. Paige, Clara K. Paige, & Sam'l W. Jackson, ex'rs, &c., ag'st David Banks, jr., Charles Banks, and A. Bleeker Banks. Stipulation.

71 Circuit court of the United States for the southern dist. of N. Y.

E. W. PAIGE, CLARA K. PAIGE, AND SAMUEL W. JACKSON, executors, &c.,
against
DAVID BANKS, J'R, AND OTHERS.

It is hereby admitted that a notice in the words and figures following:

"NORTHERN DISTRICT OF NEW YORK, *to wit:*

"Be it remembered that, on the first day of December, anno Domini 1857, Alonzo C. Paige, of the said district, has deposited in this office

the title of a book, the title of which is in the words following, to wit: Reports of Cases argued and determined in the Court of Chancery of the State of New York. By Alonzo C. Paige, counsellor at law. Vol. 1. The right whereof he claims, as author, in conformity with an act of Congress entitled 'An act to amend the several acts respecting copyrights. (de. 5 4 w.)

"AURELIAN CONKLING,
" *Clerk of the District.*"

72 Was published in the Albany Atlas and Argus, a newspaper published at Albany, in the State of New York, six times in each week for four weeks, commencing on the seventh day of December, 1857; and proof thereof is hereby waived; and it is further stipulated that the certificate attached hereto, made by Aurelian Conkling, clerk of the district court of the northern district of New York, may be read in evidence as proof of the facts therein stated of the deposit in said office of the title of volume one of Paige's Chancery Reports.

This stipulation is made subject to corrections for errors.

New York, June 22nd, 1869.

E. E. ANDERSON,
Sol'r for Def'ts.

73 EDWARD W. PAIGE & OTHERS } Dec. 30, 1869.
vs.
DAVID BANKS, J'R, & OTHERS. }

Mr. D. Campbell for plff's.

DAVID BANKS, j'r, sworn:

One of def'ts; one of firm of Banks & Brothers. At expiration of original copyright of vol. 1 of Paige' Ch. R., that is, in latter part of 1857 or early part of 1858, I believe, Banks, Gould & Co. took out a renewal of copyright of vol. 1. In our publication of such volume since that time we have claimed the copyright under such renewal. B., G. & Co. took the necessary steps, under the act of 1831, to renew the copyright of vol. 1 in 1857.

X-'d:

Since the renewal by B., G. & Co., in 1857, no communication with Judge Paige since the 2 letters in Jan'y, 1838.

Redirect:

Latter part of Dec'r, 1857—Dec'r 29—Banks & Brothers succeeded B., G. & Co. in New York, and Gould, Banks & Gould at Albany, & became assignees of all their interest in business, including all their copyrights, manuscripts, & stock, except real estate—all their personal property as a firm.

74

75 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and sixty-nine—

Present, the Honorable Samuel Blatchford, dist. judge.

EDWARD WINSLOW PAIGE & ALS., EX'RS OF Alonzo C. Paige, dec'd,
vs.
DAVID BANKS & AL.

This case coming on to be heard on pleadings and proof—
Mr. D. Campbell reads paper and is heard on the part of complainants.

Evidence for plaintiff:

David Banks, j'r, sworn.
Mr. E. E. Anderson is heard on part of defendants.
Mr. D. Campbell is heard in reply.
C. A. V.

76

77 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the United States court rooms, in the city of New York, on Friday the fourth day of March, in the year of our Lord one thousand eight hundred and seventy—
Present, the Honorable Samuel Blatchford, dist. judge.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, executors of Alonzo C. Paige, deceased,
vs.
DAVID BANKS, J'R, CHARLES BANKS & A. Bleecker Banks.
} In equity.

This cause having been heretofore heard on argument by counsel for the respective parties, on the pleadings and proofs, and the court having considered the same, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth hereby order, adjudge, and decree that the bill of complaint of the complainants herein be dismissed, and that the said complainants pay to the said defendants their costs in this suit to be taxed, and that the said defendants have execution for such costs.

(S'd) SAM'L BLATCHFORD.
MARCH 4, 1870.

78 (Endorsed:) U. S. C. C., S. D. N. Y. Edward Winslow Paige et al., ex's, &c., of Alonzo C. Paige, deceased, against David Banks, j'r, et al. Decree. E. E. Anderson, def'ts sol'r, 54 Wall st. Filed March 4th, 1870.

79 U. S. circuit court.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, ex'rs of Alonzo C. Paige, deceased,
versus
DAVID BANKS, J'R, CHARLES BANKS & A. Bleecker Banks.

To the Honorable the Supreme Court of the United States:

The appeal of Edward Winslow Paige, Clara K. Paige, & Samuel W.

Jackson, executors, &c., of Alonzo C. Paige, deceased, the above-named complainants, respectfully showeth:

That, on or about the 29th day of January, one thousand eight hundred and sixty-nine, the above-named complainants filed their bill of complaint in this suit in the circuit court of the United States for the second circuit, against the above-named defendants, praying a perpetual injunction restraining the said defendants, and each of them, from publishing or vending a certain book known as Paige's Chancery Reports, volume one, the copyright of which the complainants claimed as executors of Alonzo C. Paige, deceased, the author thereof; and also demanded an accounting for all profits made by the defendants, or either of them,
by the sale of said book, at any time since the fifth day of Janu-
80 ary, 1859.

That the defendants duly filed their answer to the said bill of complaint, and the complainants replied thereto, and such proceedings were had in the said cause, that on the 4th day of March, 1870, a final decree was made and pronounced therein by the said circuit court in the following words:

"United States circuit court, southern district of New York.

"EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Samuel W. Jackson, ex'rs of Alonzo C. Paige, deceased,
"*versus*
"DAVID BANKS, J'R, CHARLES BANKS & A. Bleecker Banks.

"This cause having been heretofore heard on argument by counsel for the respective parties on the pleadings and proofs, and the court having considered the same, it is ordered, adjudged, and decreed, and this court by virtue of the power and authority therein vested, doth hereby order, adjudge, and decree that the bill of complaint of the complainants herein be dismissed, and that the said complainants pay to
the said defendants their costs in this suit to be taxed, and that
81 the said defendants have execution for such costs.

"SAM'L BLATCHFORD.

"MARCH 4, 1870.
"Costs, $64 15."

Which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these complainants do appeal from the whole of the said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the complaint, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, and a decree may be made granting the relief prayed for in the bill of complaint, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, March 10th, 1870.

HILTON, CAMPBELL & BELL,
Solicitors for Appellants.

82 (Endorsed:) Supreme court, southern district of New York. Edward Winslow Paige & others against David Banks, jr., and others. Appeal. Hilton, Campbell & Bell, solicitors for appellants.

Due service of a copy of the appeal herein is hereby admitted.
New York, March 16th, 1870.

E. E. ANDERSON,
Sol'r. for Def'ts.

Filed Mc'h 17, 1870.

83 Circuit court of the United States for the southern district of New York.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, and Sam'l W. Jackson, ex'rs, of Alonzo C. Paige, dec'd, complainants,
vs.
DAVID BANKS, J'R, CHARLES BANKS, & A. Bleecker Banks, defendants.

Know all men by these presents that we, Douglas Campbell, of No. 32 West 29th street, New York, and Joseph Bell, of No. 32 West 29th street, New York, are held and firmly bound unto David Banks, j'r, Charles Banks, and A. Bleecker Banks, their executors, administrators, and assigns; for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated the tenth day of March, 1870.

Whereas the above-named Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, executors of Alonzo C. Paige, deceased, have prosecuted an appeal to the Supreme Court of the United States out of this court to reverse the judgment and decree rendered in the
84 above-entitled suit, and entered with the clerk of this court, at the city of New York, on the fourth day of March, one thousand eight hundred and seventy, by which decree it was adjudged that the bill of complaint of the complainants should be dismissed, and that the defendants should recover of the complainants their costs, to be taxed, which costs have been heretofore taxed at sixty-four dollars:

Now, therefore, the condition of this obligation is such that if the above-named Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson shall prosecute the said appeal to effect, and shall pay the sum awarded by the said order and decree, and answer damages and costs if the said decree shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and virtue.

DOUGLAS CAMPBELL. [L. S.]
JOSEPH BELL. [L. S.]

Sealed and delivered in presence of—
A. BARTON HOUGH.

CITY AND COUNTY OF NEW YORK, *ss:*

Douglas Campbell, being duly sworn, doth depose and say that he resides in the State of New York, is a freeholder therein, and is worth

the sum of one thousand dollars over and above all his liabilities exclusive of property exempt from execution.

DOUGLAS CAMPBELL.

Sworn to before me this 11th day of March, 1870.
[SEAL.] A. BARTON HOUGH,
Notary Public, N. Y. Co.

85 CITY AND COUNTY OF NEW YORK, *ss:*

Joseph Bell, being duly sworn, doth depose and say that he resides in the State of New York, is a freeholder therein, and is worth the sum of one thousand dollars over and above all his liabilities, exclusive of property exempt from execution.

JOSEPH BELL.

Sworn to before me this 11th day of March, 1870.
[SEAL.] A. BARTON HOUGH,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
Southern District of New York:

On this 11th day of March, one thousand eight hundred and seventy, before me personally appeared the above-named Douglas Campbell and Joseph Bell, to me known to be the individuals described in and who executed the foregoing bond, who severally acknowledged that they executed the same for the purposes therein stated.

A. BARTON HOUGH,
Notary Public, N. Y. Co.

I, Lewis B. Woodruff, justice of the circuit court of the United States for the southern district of New York, do hereby approve of the
86 form of the preceding bond and of the sufficiency of the sureties therein named.
New York, March 14th, 1870.

L. B. WOODRUFF.

(Endorsed:) Supreme court, southern district of New York. Edward Winslow Paige and others against David Banks, j'r, and others. Bond on appeal. Hilton, Campbell & Bell, solicitors for appellants. Filed March 17, '70.

87 By the Honorable Lewis B. Woodruff, judge of the United States circuit court for the southern district of New York, second circuit. To David Banks, jr., Charles Banks, & A. Bleecker Banks.

Whereas Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, executors of Alonzo C. Paige, deceased, have lately appealed to the Supreme Court of the United States from a decree rendered by the circuit court of the United States for the southern district of New York, second circuit, and from the order founded thereon directing the payment by the said Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, of sixty-four $\frac{15}{100}$ dollars, the amount of the costs of the suit in the circuit court of the United States, in which they are complainants and you are defendants, for an alleged infringement of a copyright claimed by them, mentioned in the pleadings; and the said

Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson having filed the security required by law, upon their said appeal:

You are therefore cited to appear before the Supreme Court of the United States on the 1st Monday of December, 1870, next, and
88 shew cause, if any there be, why the decree and order named in the aforesaid appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, this fourteenth day of March, in the year one thousand eight hundred and seventy.

L. B. WOODRUFF.

(Endorsed:) U. S. circuit court, second circuit. Edward W. Paige and others vs. David Banks, jr., & others. Citation. Hilton, Campbell & Bell, solicitors for complainants. Filed M'ch 17, 1870.

89 Supreme Court of the United States.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE, & Samuel W. Jackson, ex'rs of Alonzo C. Paige, deceased,
vs.
DAVID BANKS, JR., CHARLES BANKS, AND A. Bleecker Banks.

I admit due personal service of a copy of the citation issued out of the Supreme Court of the United States in the above-entitled cause, upon an appeal to the said Supreme Court from the decree and order of the circuit court of the United States for the southern district of New York, made in said cause, which said citation was allowed by the Honorable Lewis B. Woodruff, justice of said United States circuit court, on the 14th day of March, 1870, and directed to the above-named defendants, and returnable the first Monday of December next.

New York, March 16th, 1870.

E. E. ANDERSON,
Solicitor for Defendants.

90 (Endorsed:) Supreme Court U. S. Edward Winslow Paige, &c., ag'st David Banks, j'r, &c. Proof of service of citation. Hilton, Campbell & Bell, solicitors for appellant. Filed March 17, 1870.

91 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York in the second circuit, do hereby certify that the foregoing pages, numbered from one to ninety, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of E. W. Paige, C. K. Paige, and Samuel W. Jackson, ex'rs, &c., against David Banks, j'r, Charles Banks, & A. Bleecker Banks, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 26th day of Nov'r, in the year of

our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-c't int. rev. stamp affixed and canceled.]

(Indorsement on cover:) No. 371. Edward Winslow Paige, Clara K. Paige, and Samuel W. Jackson, ex'ors of Alonzo C. Paige, dec'd, appellants, vs. David Banks, j'r, Charles Banks, A. Bleecker Banks. S. New York C. C. U. S. Filed 9th December, 1870.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

U. S. Supreme Court.

E. W. Paige and others, Executors of Alonzo C. Paige,
Appellants,

vs.

David Banks, Charles Banks and A. Bleecker Banks,
Respondents.

Appellants' Brief.

This is an appeal from a decree made by Judge Blatchford, Second Circuit, dismissing a bill in Equity, brought to obtain an injunction, and to compel from the Banks, Brothers, law booksellers, an accounting for printing and selling the first volume of Paige's Chancery Reports, after January 5, 1858, thereby infringing a copyright claimed by the plaintiffs' testator.

More was claimed in the bill, but nothing except this demand, was insisted upon at the trial.

Statement of Facts.

In the year 1828, Alonzo C. Paige, reporter of the Court of Chancery in the State of New York, made the following agreement with the defendants' predecessors in business.

"*Articles of Agreement, made this 7th day of October, in the year 1828, between Alonzo C. Paige, of the City of Schenectady, of the one part, and William Gould and David Banks, of the other part:*

"Witnesseth: That the said Alonzo C. Paige (the said William Gould and David Banks, performing the agreements to be done and performed as hereinafter contained), during the term of five years from the twenty-eighth day of April last, if the said Alonzo shall so long remain reporter of the Court of Chancery, shall and will furnish the said Gould and Banks in manuscript, the reports of the said Court for publication, and that the said Gould and Banks shall have the copyright of said reports to them, and their heirs and assigns forever.

"And the said William Gould and David Banks, covenant and agree to and with the said Alonzo, that they will publish said reports in royal octavo volumes of between six and seven hundred pages, on paper and type suitable for such a work; that they will deliver to the said Alonzo twelve copies free of expense; that they will sell said reports to the members of the bar of New York, at a sum not exceeding six dollars per volume, bound in calf, for each volume they shall so sell within one year next subsequent to the publication of such volume.

And the said Gould and Banks agree to pay to the said Alonzo one thousand dollars per volume, for every volume they shall publish, and at the same rate for less than a volume, within six months after the publication of each volume.

It is understood that the said Alonzo C. Paige is to read and correct the proof sheets of said reports, as the same are furnished him.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written."

In pursuance of this agreement, Mr. Paige furnished to Gould & Banks Volume I of Paige's Chancery Reports, and on the 5th of January, 1830, Gould & Banks took out the copyright therefor, in their own names, as proprietors.

At this time the law of Congress gave, under a copyright, a term of fourteen years, with a privilege of a further term of fourteen years at the expiration of the first, to the author, if living; or to his wife or children, if he was dead.

In 1831, the law was amended, by extending the original term to twenty-eight years, and giving at the expiration of that time, a further term of fourteen years exclusively to the author, or his family.

Mr. Paige claimed that he was entitled to this last term of fourteen years, and on the expiration of the term of twenty-eight years, which was on the 5th of January, 1858, he took out an extension or renewal of the copyright, as required by the Act of Congress, in his own name, as author, and notified Gould & Banks to desist from publishing or selling the same, by the following letter:

"SCHENECTADY, Jan. 13, 1858.

"*Messrs.* GOULD, BANKS & Co.

"*Gent.: I have renewed the copyright of vol.* 1, *of Paige's Chan-*

cery Reports, the renewal became perfected by a publication of the title of the book, of the 5th of January, inst.

"By the renewal you will perceive that all right on your part to print, publish, or vend, this volume of my reports has ceased; you will, therefore from henceforth refrain from printing, publishing, or vending the first volume of Paige's Chancery Rep., and if you have printed, published, or vended any copies of this volume since the 5th of Jan. inst., you will be liable to me for so doing.

"I think, also, you are liable to compensate me for the sale of this volume for the last fourteen years, the period of the elongation of the original term of 14 years granted by the Act of 1790. I intend to renew the copyright of the other volumes (2 to 9 inclusive), as the first term of 28 years expires.

"I am willing to receive a proposition for the purchase of all my interest in Paige's Chancery Reports.

"Yours Respectfully,
"A. C. PAIGE."

Gould & Banks also took out a renewal in their own names (fol. 73), and have continued to publish and sell, claiming that the contract with Mr. Paige assigned to them all his interest in the book, and that in any event they had a perpetual license to publish and sell (fol. 50—Answer).

By various changes the firm of Gould & Banks has become Banks Brothers, composed of the respondents.

Mr. Paige died March 31st, 1868, and the appellants are his executors.

There was no conflict of testimony upon the trial. Justice Blatchford dismissed the bill.

The case is reported, 7 Blatchford's Rep., p. 154.

The appellants contend that the Justice below erred in dismissing the bill, and claim that the prayer of the bill should be granted.

First Point.

Were this a simple assignment of the copyright, that is, had Mr. Paige taken out the copyright in 1830, and assigned it to Gould & Banks, nothing would have passed but the first term.

This seems to be settled beyond controversy.

Pierrepont *vs.* Fowle, 2 Woodbury and Minot, 23.
Cowen *vs.* Banks, 24 How. Prac. R., 73.

7 Blatch 155

At the time that Mr. Paige's contract was made, 1828, this last term was not provided for by the statute. The Act of 1831 created it, and gives it specifically to the author if living, to his family if dead. Assignees are not mentioned in it, nor provided for.

Curtis, in his work on Copyright, p. 235, questions whether the author by any assignment could dispose of this contingent interest so as to deprive his widow and children of the right in case of his death.

A similar provision in the patent law has been so construed by this Court.

Wilson *vs.* Rousseau, 4 How., 646.
Bloomer *vs.* McQwewan, 14 How., 539.
See also Hodge *vs.* H. R. R. R., 6 Blatchford, 85, 88, 91.

Second Point.

The agreement in this case was only an assignment of the copyright, and therefore conveyed only the original term.

The construction claimed by the defendants, and sustained by the Circuit Court, is, that the agreement contains two separate transfers, an assignment of the copyright, and also, an equitable license to print, publish and sell forever; and that although the copyright has expired, the license is still in force and is a defense to this suit.

It is submitted on the part of the appellants, that this construction is erroneous.

1. The intention of the parties, to be collected from the whole agreement, was simply to convey the copyright, though it be admitted for the sake of the argument that the agreement contains provisions sufficient to create a license if the copyright had not been specifically conveyed.

(*a.*) With this construction, all parts of the agreement are harmonious and consistent.

First.—There are the operative words of conveyance of the copyright, "*the said Gould and Banks shall have the copyright of said reports to them and their heirs and assigns forever.*" Then there is the obligation to furnish

the manuscript, without which, as the book was yet unwritten, the assignment of the copyright would be worthless.

Clark *vs.* Price, 2 Wilson Cases in Chan., 157. Lord Eldon held that there was no power in the Court of Chancery to compel an author to write a book for his publishers. A simple assignment of a copyright, without some provision as to furnishing the manuscript, would therefore be a nullity; with such a provision, the publisher could recover damages for a failure to write and deliver the manuscript.

This provision was therefore absolutely necessary to make the transfer of the copyright operative and valuable.

These are the only provisions that can be construed either to transfer the title of, or create an interest in, the literary property of this book. Then follow the obligations on the part of the assignees. There is nothing in the agreement which is inconsistent with the construction that it was intended as a simple assignment of the copyright; on the contrary, there is not an obligation on the part of the assignees, which is not absolutely necessary to that conveyance. Mr. Paige being an official reporter, it was necessary for him to make provision for the publication of his reports in a proper form.

(*b.*) But if the agreement is regarded as conveying a license in addition to the copyright, it is neither harmonious nor consistent.

A license is something less than a copyright; and every transfer of the copyright conveys every right which could be given by a license, the lesser title is therefore merged in the greater. A license and a copyright cannot exist at the same time in the same person.

If a license were intended to be given, why was the copyright conveyed?

It may be said, that a license was intended to be given, beginning at the expiration of the copyright.

The answer is, that at the time this agreement was made, the only exclusive right given to the author was a right to publish and sell for twenty-eight years, this passed by the assignment of the copyright; after that time any one had the right to publish and sell without

a license. A license then beyond the twenty-eight years would be an absurdity, unless the parties had in their minds an intention to provide for any change that Congress might make in the law. But there is not a word in the agreement showing such an intention.

(*c.*) The consideration was fixed upon the basis of the value of the copyright under the existing law.

The volume to be furnished was only valuable to the assignees, because of the copyright. If the copyright was to run twenty-eight years, it would be less valuable than if it was to continue for forty-two.

The very fact that a sum in gross was fixed upon as compensation, shows that the parties had in their minds the existing laws as determining the value of the property bought and sold. Had they fixed upon a per centage on the sales as the method of compensation, it might perhaps be urged that they intended to provide for possible changes in the law.

(*d.*) The first rule in regard to the interpretation of a written agreement, is that it must be construed according to the intention of the parties, as shown by the instrument itself.

But there is nothing here from which an intention to create a perpetual license appears. Such a construction can be obtained only by disregarding the provisions in regard to the assignment of the copyright, and the compensation to be paid to the author, and applying to what is left, the rules by which the courts give effect to a defective transfer upon the ground of the presumed intention of the parties.

For example, it has been held, that where one furnished a manuscript to a publisher, with the declaration that it was a free gift, and that she would receive no remuneration for it, and then stood by and allowed the publisher to publish and sell it for fourteen years, she could not then enjoin him from continuing the publication.

Rundell *vs.* Murray, Jacob's Rep., 315.

Even in that case Lord Eldon did not decide the question of right, but sent the parties to try their title at law, intimating his opinion that the author had a right to publish as well as the publisher.

In like manner it might be said of this agreement, when mutilated by leaving out the provision concerning the copyright and the consideration, that the author having bound himself to furnish the manuscript, and having, as appears from the case, stood quietly by for many years while the publication was going on, had evidenced an intention of licensing the publication, and could not now put a stop to it.

But the application of the remedial rules of construction, to prevent fraud and injustice by supplying the defects in an agreement on account of the presumed intention of the parties, is a very different thing from their application, in the same way, to selected portions of a complete and harmonious agreement, in order to create an additional right was title, besides the one clearly intended by the agreement, although the selected portions would, if they stood alone, present a fit case for the application of these remedial rules. It is only when an agreement is defective, that the intention of the parties will be implied as to certain things not expressed, in order to give effect to it.

(*e*). The construction contended for by the defendants, is opposed to the maxim. "Verba generalia restringunter ad habilitatem rei vel personam." 2. Comyn on Contracts, 533. note 7. Story on Contracts, § 641, *a*, Chitty on Contracts 10th Am. Ed., 90 91., in force in New York by the law of which the agreement is to be construed as to everything except the copyright.

Van Hagen, *vs.* Van Rensselaer, 18 John, R., 423.

Elmendorf *vs.* Lansing, 5 Cowen, 470. The rule is laid down "*The matter in hand is always presumed to be in the mind and thoughts of the speaker, though his words seem to admit a larger sense; and therefore the generality of the words used shall be restrained by the particular occasion.*"

It is respectfully submitted, that even if the words of this agreement were sufficiently broad to grant a perpetual license, yet that from all the circumstances, the condition of the copyright law at the time, and the consideration paid, it is evident that nothing was intended but an assignment of the copyright, which the author was then entitled to, and the general words *will be* "*restrained by the particular occasion.*"

(*f*.) Had the parties intended to grant more than the copyright, they would have inserted some words showing the inten-

tion of the author to part with his interest in the books, or to create a perpetual license.

(*g.*) The construction given by the defendants to this agreement is significantly shown by their conduct at the expiration of the twenty-eight years of the copyright. Instead of adopting the view of his Honor Justice Blatchford, that they had a license to publish and sell after that time, they claimed that, under this agreement, they obtained an assignment of this renewal term, and accordingly took out a new copyright for it as assignees, and in their publication since that time have so claimed it. (See folio 73, Transcript of Record.)

2. But the agreement contains no words creating a license.

(*a.*) The only words that can be held to transfer a title, or vest an interest in Gould & Banks, are these :

"*That the said Paige shall and will furnish the said Gould & Banks, in manuscript, the reports of said Court for publication, and that the said Gould & Banks shall have the copyright of said reports to them and their heirs and assigns forever.*"

But furnishing a manuscript does not give a right to publish and sell.

Stephens *vs.* Cady, 14 How., 530.
Miller *vs.* Taylor, 4 Burr., 2396.
2 Eden., 329.
2 Atkins, 342.
2 Story's Rep., 100.
5 McLeon, 41.
17 How., 447.

"*The transfer of the manuscript of a book will not at common law carry with it a right to print and publish the work, without the express consent of the author, as the property in the manuscript and the right to multiply the copies, are separate and distinct interests.*"

Justice Nelson, in Stephens *vs.* Cady, *supra.*

Upon the same principle, a delivery of the manuscript, with authority to publish, does not include an authority to sell.

It might well be, that a publisher would be willing to bring out a book for nothing, transfer all the copies to

the author when printed, for the sake of having his name known as the publisher of the book, especially might this be the case when the book was of a semi-official character, like a volume of reports.

The cases cited above all hold, that the transfer of the copyright is the principal thing, without which the transfer of the manuscript would be valueless; while Justice Blatchford seems to hold, that the transfer of the manuscript is the main thing, giving a license to publish and sell an indefinite number of copies, and that the assignment of the copyright is only incidental and subsidiary.

In this case, it is possible, that even if the clause were omitted which assigns the copyright, Gould & Banks would have had a right to publish and sell during the original term, but that would be upon the theory that the whole agreement taken together constituted an equitable assignment of the copyright, not a license.

Sweet *vs.* Shaw, 3 Jurist, 217.
Sweet *vs.* Cater, 11 Simons, 573.
Shortt's Law of Literature and Art, p. 159.

Much more, when the copyright is definitely assigned, these limiting and qualifying clauses applicable to such an assignment will be held to relate to it.

It was said by Lord Hatherley, in Read *vs.* Bentley, 4 Kay and Johnson, 669, "*the onus is upon the party who contends that this amounts to a license which upon the face of it, does not.*"

(*b.*) The opinion of Justice Blatchford, in which he supports the theory of a license, it is submitted, is unsound, being founded on assumptions not supported by the facts, and conclusions not sustained by his premises.

He argues, that as the number of copies to be printed and sold by Gould & Banks is not specifically restricted, and as Mr. Paige is to receive but $1,000 for each volume, "*these provisions clearly give to Gould & Banks, as against Mr. Paige, the perpetual right to print, publish and sell copies of such first volume without giving to Mr. Paige any further compensation,*" &c.

It is respectfully submitted that this reasoning is unsound. As the agreement was an assignment of

the copyright, and Gould & Banks acquired the right to print and sell the book, because it was an assignment of the copyright, it was not necessary to restrict in terms the number of copies to be sold by them; they could only print and sell during the continuance of the copyright; and might, during that time, sell all they could find a *bona fide* purchaser for.

This argument of Justice Blatchford, applied to patents, would be: A assigns to B, for $1,000, a half interest in his patent for making sewing-machines, for example, the assignment provides the form in which the machines are to be finished, and their price, but, of course, does not prescribe how many B is to make and sell. At the expiration of his term, A obtains an extension of his patent. According to Justice Blatchford's reasoning, B might continue to sell the machine forever—certainly sell all he had on hand. This Court has decided differently; has held that he could not sell after the extension was granted.

Wilson *vs.* Rousseau, 4 How., 683.

If the construction contended for by the appellants is correct, it was unnecessary to restrict in terms the number of copies to be printed and sold by Gould & Banks; the law limits the number, by restricting them to sales during the original term of the copyright.

The reasoning of Justice Blatchford, stated logically, is:

The agreement does not restrict the number of copies to be printed and sold.

A permission to print and sell an unlimited number of copies is a perpetual license.

Therefore, this agreement creates a perpetual license.

The argument is fallacious, because the distinction is not observed that, although the number of volumes to be sold is not restricted in terms, yet the number is not unlimited, because the law itself limits it.

Justice Blatchford then seems to argue, that as Mr. Paige is never to receive more than $1,000 per volume, this shows that he intended to grant a perpetual license. The counsel for the appellants has already attempted to show that, on the contrary, this fact proves that the compensation was fixed upon the basis of the value of the copyright then obtainable under the laws of Congress, and, therefore, proves that the author only intended to assign what he had under the law, and not

all contingent interests which Congress might bestow upon him.

Regarding the assignment of the copyright, Justice Blatchford, says:

"*But the provision in respect to copyright was inserted in the agreement for the sole purpose, manifestly, of making it clear that Gould & Banks were to be understood to be such assignees of Mr. Paige* * * * *as could, under the act of* 1790, *secure to themselves the copyright.*" * * * * * *

"*If they had not chosen to take out any copyright as proprietors of any volume of the reports, they would have had as against Mr. Paige, the perpetual right to print, publish and sell the reports.*"

It is submitted that the provision in respect to the copyright was inserted in order to convey to Gould & Banks, something of value for their money, without which the manuscript or even the right to print and sell, would have been substantially worthles, and concerning the latter extract from the opinion, it is submitted, that had Gould & Banks attempted to publish and sell those reports without taking out a copyright, Mr. Paige might have compelled them to do so, or might have taken it out himself, in order to protect his right to the extension or renewal.

If this provision concerning the copyright is so unimportant, leave it out of the agreement, and how would the parties then stand?

In one of two positions—either Gould & Banks would be in the position of equitable assignees of the copyright, or as having a license to publish and sell.

In the former case if equitable assignees, the question would arise, of what were they assignees? Manifestly of just such an interest as a legal assignment would have given them, and that has been decided to cover but the first term.

Cases cited above.

If the second position is adopted, then Mr. Paige might have taken out the copyright himself, and printed and sold; such manifestly was not the intention, and then Congress having subsequently bestowed extended privileges upon authors, the question would arise whether Mr. Paige intended by his license to part with these, the answer to which would be, that as he had not done so by express words, he would not be sup-

posed to have granted what he did not have, and never expected to have.

But it is hardly necessary to discuss what might be the construction, if these words were omitted; they are there, and Gould & Banks did take out the copyright.

And they have shown most unequivocally that they did not consider themselves simple licensees as to the extended term, but claimed to possess it as assignees, by themselves taking out a renewal at the expiration of the first term of 28 years.

3. The appellants urge their construction of this agreement with the more confidence, as an instrument of this same character was been construed by his Honor Justice Nelson, sitting at Circuit, in an action, argued before him, by several of the ablest counsel at the New York bar.

Cowen *vs.* Bank, 24 How. Prac. Rept., 73. The agreement in that case copied from the judgment roll was as follows.

"*Memorandum of agreement made this nineteenth day of Angust, one thousand eight hundred and twenty-three, between Esek Cowen, Esq., of Saratoga County, New York, reporter of the decisions of the Courts of the State of New York, of the first part, and William Gould and D. Banks, of the city and county of New York and Albany, Law Booksellers, of the second part. The said Cowen agrees to furnish the said Gould and Banks, the reports of the Supreme Court of the State of New York, in manuscript, for the sum of fifteen hundred dollars per volume, and continue the same for and during the term of five years, at the same price, or during the whole period of time the said Cowen continues reporter, this is to be at the election of the said Gould and Banks, the volume is to be a royal octavo, containing between six or seven hundred pages similar to the report of William Johnson; the matter or manuscript for said reports to be furnished quarterly if convenient to the reporter.*

The said Cowen agrees to purchase from said Gould and Banks, all law books he may want at the fair retail prices, the books he now owes for to be considered a part of said purchase, which amount of books is to be deducted from the above $1,500, *and the balance is to be paid in money.*

The said Gould and Banks agree on their part to print the said works at Saratoga Springs, under the care and inspection of said Cowen, on as good paper as that used in Johnson's Reports, and they will sell the same to the New York Bar, for the sum of five dollars in calf, or four dollars and fifty cents in sheep binding (if exacted), per volume, and they further agree to furnish the number of volumes wanted by the State, and one to each of the Clerks of the Supreme Court, one to the Secretary and one to the Comptroller, one to each of the Supreme Court Judges, and Chancellor

and Lieutenant Governor, and one dozen to said Cowen. It is further agreed and understood between the parties, that the said Gould and Banks are to pay for each and every volume of said Cowen's Reports, fifteen hundred dollars, in six months after the publishing of each volume, and all books (as aforesaid), that said Cowen may owe for, shall be deducted from said amount of $1,500.

The said volume may or may not include the decisions of the Court of Errors and the Court of Chancery, or either of them, as shall be determined by said Cowen on consultation with the appointing pow r, the Presidents of those Courts.

In case the pages of each volume exceeds 700 pages, the price is to be raised if it meets the approbation of the appointing power. It is further understood and agreed between the parties to this instrument, and in consideration of the sum of fifteen hundred dollars aforesaid, paid by the said Gonld and Banks to the said Cowen, that they are to have the copyright of each volume, and that the same shall be secured or taken out in their own names, and belong exclusively to the said Gould and Banks, and their heirs and assigns forever."

"E. COWEN."
"WILLIAM GOULD."
"D. BANKS."

His Honor, Justice Nelson, after careful co tion, gave to that [redacted] the constructi claimed by the appellants, but decided in favor o... defendants, on a cross action brought by them to amend the agreement, so as to convey all the interest of Cowen in the extended term, because Cowen had in his lifetime sworn as a witness in a suit, that he had no interest in the reports, present or contingent.

The present case is much stronger than that of Cowen's, for the term claimed by his representatives, was the 14 years of the extended term of 28 years, given by Statute of 1790, to authors or their *assigns*, but by Statute of 1831, conferred upon the author alone, while the appellants, here, claim the renewal term given by Section 16 of the Statute of 1831, after the expiration of the 28 years, to the author, or his family, and not to his assignee, and to which a[redacted] the assignee was never entitled.

Third Point.

There was no abandonment of his copyright by Mr. Paige; on the

contrary, the defendants continued to print and sell, after actual notice from him, that he should hold them accountable.

Perhaps there can be such a thing as an abandonment of literary property; but, if so, only upon the principle that the Statute of Limitations can be invoked against the author's claim. Here there is no such pretence.

The cases cited by the defendants, do not support their position, but, on the contrary, one of their authorities, cited in the argument below, overthrows it.

Platt *vs.* Burton, 19 Vesey, 447.

Fourth Point.

The appellants are entitled to recover for all copies sold by the defendants, since January 5th, 1858.

1. They are not limited to the copies printed by the defendants since that time, as intimated in the opinion of Justice Blatchford.

The law gives to the owner of the copyright "the sole right and liberty of printing, re-printing, publishing and vending." This is the very meaning and essence of the copyright. The renewal is of "the same exclusive right."

The provision would be nullified if the assignee could, just before the expiration of his term, print an unlimited number of copies, and then continue to sell them during the renewal granted to the author.

The construction of the analogous provisions of the patent law, coincides with this view.

Wilson *vs.* Rousseau, 4 How., 683.

2. No Statute of Limitation runs against the claim of the appellants.

The answer pleads the Statute of Limitations, but pleads it incorrectly.

The limitation, if it exists at all, is to ten years before the bringing of the action, and not to six, as claimed by the de-

fendants. There is no legislation by Congress upon the subject, and the Law of the State of New York will govern.

8 Peters, 270.
13 " 45.
2 Black., 599.

The only provision of the New York Statute of Limitations restricting recovery to six years, under which this could be claimed to come, is Section 91 of Code.

" *An action upon a contract, obligation or liability express or implied.*"

But there was no contract between Paige and Banks, or liability such as is meant in this statute, under following decisions of the N. Y. State Courts.

" *The Statute of Limitations has no application to the equitable right of a tenant in common to be allowed compensation for his improvements upon making partition.*"

Green *vs.* Putnam, 1 Barb., 500.

Yet there is here as much of an implied contract or liability as in case of author and pirate of copyright.

No lapse of time bars a direct and express trust as between *cestui que trust* and trustee.

Decouche *vs.* Savetier, 3 Johns. Ch., 190.

" An action by a purchaser at a Receiver's sale, of the demands of a bank against its cashier, who had been the principal financial agent of the bank for several years, and its assignee under several assignments, and had had numerous transactions with the bank, but had not settled his accounts, the action being brought to compel an accounting touching all these transactions.

Held, not barred until ten years.

Mann *vs.* Fairchild, 14 Barb., 548.

An action for specific performance of a contract not barred until ten years.

Bruce *vs.* Tilson, 25 New York, 194.

These cases are all those of a nature only cognizable by a Court of Equity, and the true meaning of the section of the Code given above, is that actions on contracts express or implied, and liabilities of a common law character must be brought within six years.

Otherwise there would be no meaning in section 96 of the Code.

"*An action for relief not hereinbefore provided for, must be commenced within ten years after the cause of action shall have accrued.*"

For in one sense all rights are founded upon contract, express or implied, and if section 91 uses the words contracts and liabilities in that sense, then section 96 means nothing, for there can be no such action.

The best illustration which can be used, is the claim for *mesne* profits after recovery in ejectment. Such claim would not be barred after six years by the Statute of Limitations, but is barred by a special statute restricting the recovery to six years, thereby showing that in the absence of such a statute there would be no limitation.

2 R. Statutes N. Y., 12, 311.

This piracy of our copyright is a wrong like that for which ejectment lies in cases of real property, and the claim for an accounting in the two cases are alike in principle.

Fifth Point.

The decree of the Circuit Court should be reversed, and the cause should be sent back with directions that the defendants render an account of the copies published, printed or sold by them between the 5th of January, 1858, and the 5th of January, 1872, that they be restrained from selling any copies published or printed by them during such time; that they pay to the plaintiffs all damages sustained by Mr. Paige or his representatives, by such publishing, printing or vending.

The plaintiffs should not necessarily be restricted to the recovery of the profits made by the defendants.

It may be, that the defendants sold this book at or below cost, for the purpose of aiding their other business, knowing their liability for damages, and intending to provide against contingencies.

The plaintiffs should recover what Mr. Paige or his representatives might have made from the book. This can be easily

determined, as Mr. Paige retained the copyright of vols. 10 and 11 of his reports, and it can be shown what profits he made from them.

The rule is not to be applied here, which holds in the case of an innocent infringer of a patent, that the patentee can recover only the profits made.

The question is, what should have been made; what has been the author's loss; what was the copyright worth?

WILLIAM W. CAMPBELL,
Of Counsel.

SUPREME COURT

OF THE UNITED STATES.

EDWARD WINSLOW PAIGE, CLARA K. PAIGE and SAMUEL W. JACKSON, Executors of ALONZO C. PAIGE, deceased, Appellants,

against

DAVID BANKS, CHARLES BANKS, and ANTHONY BLEECKER BANKS, Appellees.

Points for Appellees on Appeal to the Supreme Court from a Decree of the Circuit Court in the Second Circuit.

This suit was brought to establish the appellants' title to Volume 1 of Paige's Chancery Reports of the State of New-York, and to enjoin the appellees from printing, publishing or selling the same, and for an account of damages.

The case was heard on the pleadings and proofs before the Hon. Samuel Blatchford, and a decree was made dismissing the bill, with costs.

(See Judge Blatchford's opinion, 7 *Blatchford*, page 152.)

This is an appeal taken from that decree.

The facts are not in dispute.

On the 7th of October, 1828, the late Alonzo C. Paige made an agreement with William Gould and David Banks. This agreement is set forth at large in the complaint, (fols. 6 to 9.)

By this agreement, the said Paige agreed, that as long as he should remain Reporter of the Court of Chancery he would furnish the said Gould & Banks, in manuscript, the reports of the said court for publication, and that the said Gould & Banks should have the *copyright* of said reports to them and their heirs and assigns *for ever.*

Under this agreement the manuscript of the first volume of Paige's Reports was furnished to the said Gould & Banks, and they took out the copyright for the book in their own names on the 5th day of January, 1830.

By the law as it then stood, this copyright endured for fourteen years.

By the 16th section of the copyright act of 1831, see 4 *Statutes at Large*, 436, it was provided:

"That whenever a copyright shall have been hereto-
" fore obtained by an author * * * of any book, &c.,
" if such author * * * be living at the passage of
" this act, then such author * * * shall continue to
" have the same exclusive right to his book, * * *
" with the benefit of each and all the provisions of this
" act for the security thereof, for such additional period
" of time as will, together with the time which shall have
" elapsed from the first entry of said copyright, make up
" the term of twenty-eight years."

By force of this provision, the original copyright was extended for fourteen years, so that it would not expire till the 5th day of January, 1858. No question arises in this action as to the title to the book during this elongated term.

By the 2d section of the said act, it is provided:

That if, at the expiration of the aforesaid term of years, (reference is here made to the first 28 years of the copy-

right,) such author * * * be still living, and a citizen * * * of the United States, or resident therein, or being dead, shall have left a widow or child or children, either or all then living, the same exclusive right shall be continued to such author; * * * or if dead, then to such widow and child or children for the further term of fourteen years; provided, however, that the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copyrights be complied with in regard to such renewed copyright, and *that* within six months before the expiration of the first term.

Judge Paige was living at the expiration of the 28 years, and a resident of the Northern District of New-York.

The appellees, who are the assignees of the said David Banks and William Gould, were residents of the City of New-York.

On the 30th of October, 1857, the appellees, conceiving themselves to be entitled to the renewal term of fourteen years, renewed their copyright in the Southern District of New-York.

On the 3d of January, 1858, the said Paige, claiming that the provision of the statute enured to his benefit, filed a copy of the title page of the book in the office of the Clerk of the Northern District of New-York.

On the 13th of January, 1858, Judge Paige wrote to the appellees the letter contained in the complaint at folios 46 and 47.

In this letter he notifies the appellees that he claims title to the work, and notifies them that he intends to renew the copyright of the other volumes (2 to 9, inclusive) as the first term of 28 years shall expire.

Appellees answered this letter on Feb. 2d, 1858. (See complaint, folios ~~48, 49 and 50.~~) 58-59

In this answer they assert that their understanding of the original agreement was that the entire title to the manuscript of the book, and the unlimited right to publish the same, and the right to avail themselves at all times of the protection afforded by statute, whether by original

copyright or by renewal of copyright, were intended to pass thereby. And also, that as the manuscript had been delivered for publication without limit as to time, the said David Banks and William Gould, and their assigns, had an unlimited license to publish and sell for ever.

From that time to the time of Judge Paige's death, in 1868, he never interfered with the appellee's publication and sale of Volume One, nor did he take any steps to perfect his title to the renewal term of the subsequent volumes. (See the search for renewals, fols. 61, 62.)

Point I.

This is not the ordinary case of an author who perfects his own copyright and then sells it. This is the case of an author who, for a stipulated gross sum, sells his book in manuscript for publication.

The decisions, therefore, that have been made in cases arising on construction of agreements for sales of copyright have no application to the present case.

In Pierpont *vs.* Fowle, 2 *Woodbury & Minot*, 23, the plaintiff was the author of two books, the defendant was the publisher. The contracts under which the publisher claimed title were dated July 21st, 1823, and July 12th, 1827. The only copyright then existing or taken out was for fourteen years only. That copyright which had been taken out was the subject matter of the contracts. In respect to both copyrights, the complainant conveyed as to the first "the copyright of said book," and as to the last "the copyright of it shall be considered the joint and equal property of said P. and F."

(See pages 42, 43, where this distinction is pointed out.)

This decision has, therefore, no application to the present case, for the rules of construction which may apply to the sale of a copyright do not apply to the sale of a manuscript for publication.

In Cowen *vs.* Banks, 24 *N. Y. Howard's Reports*,

page 70, the form of the agreement between the parties is not set forth, but it is alluded to at page 74 as being an agreement "transferring the copyright to the defendants in that suit." No question is made in that case as to the effect of a sale or delivery of the manuscript for publication; and the intimation made by the court as to the right of the author to the extended term of the copyright, which arose after the expiration of the original term existing at the time the contract was made, was based, as in the case of Pierpont *vs.* Fowle, on the assumption that the contract was a contract transferring a copyright.

This case is, therefore, entirely inapplicable to the present case.

Point II.

That an author has at common law an absolute title to the manuscript of his book before publication, is entirely settled. The effect of the statutes on his rights after publication has been very much discussed, but the cases all concur in sustaining the title before publication.

Wheaton *vs.* Peters, 8 *Peters*, 657, 661.

Pierpont *vs.* Fowle, 2 *Woodbury & Minot*, 45.

The manuscript being then the author's personal property, and being as such property subject to his absolute control and to his right of disposing of the same, the question presented by this case is: What is the legal effect of an agreement by an author to furnish and deliver his manuscript to a publisher for publication, at an agreed price per volume?

Waiving the consideration of the question whether, under such an agreement, the author would retain, concurrently with the publisher, the right to publish and sell his books, it seems to be a necessary sequence of this statement of the case, that the publisher has the right to publish and sell the book at all times.

This right is not dependent on nor derived from the author's copyright. It would exist equally if no copyright

were ever taken out. The consideration they are to pay for this privilege is fixed by the act of the parties themselves at one thousand dollars. For this sum they are to have the manuscript delivered to them for publication. Not for one year nor for five years, but without limit as to time.

The contract must be construed according to the expressed intention of the parties; it does not say "for publication during the copyright," but it says simply "for publication." It is impossible to affix a limitation to this privilege without interpolating into the contract words of limitation that do not exist in it.

Point III.

The publishers had the undoubted right to print as many copies of the book as they saw fit. The price to be paid Judge Paige was not in any way dependent on the number of copies printed. Had they done so they would have the same right to sell these copies after the expiration of the original copyright as before. A construction of this agreement which would give the publishers the right to sell these books during the renewal term, provided they printed before its commencement; but would deny it, if they were printed after its commencement, is unnatural and unreasonable.

Point IV.

Is the right of the appellees to publish this book in any way restricted by the provision in the contract, that "they shall have the copyright of said reports to them and their heirs and assigns for ever"?

This is not a provision inserted for the benefit of the author. There is no covenant that the publishers shall *take out* a copyright, either for their own benefit or for the benefit of the author. Had they chosen not to take

out the copyright, they would have had, as against Mr. Paige, the perpetual right to print, publish and sell the reports. How, then, can this clause of the agreement, inserted for the purpose of making it clear that the publishers were to be the proper parties to take out the copyright, have the effect of limiting or restricting their right, derived from the sale of the manuscript to them for publication? There is no copyright sold to them, or conveyed to them, or agreed to be sold or conveyed to them. It is the manuscript which is sold to them for publication. and they, the publishers, are designated as the parties who shall for ever be entitled to take out the copyright,

Regarding the sale of the manuscript for publication as a mere license to publish, it would pass to the appellees the right to publish and sell the book, even though the author had expressly reserved to himself the right to the copyright. This right being unlimited in time, would be as valid during the renewal of the copyright as during the original term.

Curtis on Copyright, 222, 223.
Randall *vs.* Murray, *Jacobs' R.* 311.

Surely the right given to the purchasers of the book, to take out and own the copyright for ever in their own names, cannot diminish the measure of their right to publish.

The following cases are referred to as illustrating the nature of an author's title to the manuscript of his book before publication, and the manner in which his rights may be affected by assignment or licenses to publish:

Little *vs.* Gould, 2 *Blatchford*, 165, 362.
Little *vs.* Hall, 18 *Howard U. S.* 165.
Pulte *vs.* Derby, 5 *McLean*, 328.
Henry D. Palmer *vs.* R. M. De Witt, *N. Y. Times*, *March* 13, 1872.

Point V.

The agreement between the parties was not, however, a mere license. By its provisions the title to the book itself, and the right to the benefit of all statutes then existing, or at any time to be passed, was vested in the appellees. All the cases agree that if the intention to pass the entire interest of the author appears in the transfer, the assignee will acquire the right to the original term and to all renewals.

In Carnan *vs.* Bowles, 3 *Bro. C. C.* 88, it was held, that under Section 11, Act of 8 Anne, where the author conveyed the copyright and all his right and interest, it carried the contingent interest in the second term of fourteen years, as well as the absolute interest in the first fourteen years.

See note to this case, 1 *Hawk. Pl. C.* 477, n. 7, 6th Dublin Ed. "If the author assigns by general words all "his interest, &c., in the copyright, he conveys not only "his absolute interest for the first fourteen years, but his "contingent interest also in the other fourteen years, "which result to him, if living, upon the expiration of the "first fourteen years."

The delivery of the manuscript for publication for a sum stipulated is in effect a sale of the book, and transfers to the appellees the author's whole title to the book. The provision that the appellees should have the copyright for ever attached to their whole title, and gave them the right to take out both the original term and the renewal term.

Point VI.

More than ten years before the institution of this action, and at the time the copyright for the renewal term was taken out by Judge Paige, the precise question now before the court was raised by Judge Paige, and the position now taken by the appellees was clearly stated to him.

Case, fols. 26, 27, 28.

From that date to the time of his death, he has acquiesced in the publication and sale of this book by the appellees.

Case, fol. 73.

In Cowen *vs.* Banks, 24 *Howard, N. Y.*, page 70, it was held, on a contract merely assigning copyright, that the declaration of the author, made after the publishers had exercised their rights under the renewal term, that "his intention was to convey his whole interest in the "copyright of the work, and that he supposed the book "to belong to his assigns as soon as made, including all that was in it," entitled the publishers to a reformation of their contract, so as to include the renewal term. Does not Judge Paige's acquiescence in the publication and sale of this book for ten years after formal notice of appellees' claim, prove conclusively that his own understanding of his intentions in entering into the contract with the publishers was the same as set forth by them in the letter written by them 3d Feb., 1858? (Case, fol. 27.) Is not such acquiescence entitled to as much weight as the single declaration of intention made by Judge Cowen?

Point VII.

If this agreement be regarded as effecting a transfer of the entire title of the author in his manuscript, so as to make the plaintiffs' assignors the proprietors of the book, and if we regard the provision by which it is declared, "that they shall have the copyright of the said book to them and their heirs and assigns for ever," as an incident to their title as proprietors of the book, the agreement becomes in all its parts consistent and intelligible.

This view of the agreement will also furnish a complete answer to every criticism attempted in the appellants' points.

In his first point he argues, that because at the time the contract was made, the renewal term, the title to which is in dispute in this suit, had not been created by statute; therefore, the author could not dispose of it, or at least would not pass it by a mere assignment of copyright. But at the time the contract was made, an author had the absolute and entire title to his book before publication, and if he chose to sell the book, he had the undoubted right to do so, and the purchaser of the book would succeed to all the rights of the author.

So as to the appellants' second point, that it is an incongruous and unreasonable construction to regard this agreement as conveying a perpetual license joined to a limited copyright, the entire criticism ceases to have any point, when we regard the agreement as conveying the author's title to the book, with the right to the assignees to apply for copyright at any time as proprietors of the book.

So as to the reasoning that the price to be paid was fixed with reference to the copyright law as it stood at the time of the sale, there is no point in claiming that the parties did not have the possibility of an extension by Congress in their minds, if the price was intended to be the price of the author's title to his book, and was intended to vest in the assignees all the author's rights.

In short, the whole of the appellants' brief is based on the assumption that it is impossible for an author to sell his whole title to his book before publication, and to covenant that his purchaser shall be the proper person to take out the copyright; and yet these respondents submit that this is exactly what was intended by the parties to this contract. At the time it was made the copyright of the book had no existence. Nor does the agreement contain any provision by which any of the parties to it were bound to take it out. How, then, could the parties contract for the sale of a copyright which had no existence at the time, and which might, without violating the rights of any of the parties, never have any existence? The only provision relating to copyright in the contract provides, that the copyright shall in its inception belong

to the purchasers of the book. Is it not clear that they take this title not as assignees of the copyright, but as owners of the book itself? That their right to copyright is an incident to their title to the book, just as a right to wharfage may be conveyed as an incident to a lease of a water-front or a right to rent as an incident to the demise of a house.

Point VIII.

In any event, the acquiescence of the author for ten years, (and until his death,) after his alleged right accrued in the publication and sale of his work, must be held to be an abandonment of his property in this work, if any he had.

Randell *vs.* Murray, *Jacobs*, 311.
Bartlett *vs.* Crittenden, 3 *McLean*, 37; 4 *Burr*, 2315.
Platt *vs.* Burton, 19 *Vesey*, 417.
Folsom *vs.* Marsh, 2 *Story*, 169.
Curtis on Copyright, 222.

Point IX.

Should the judgment appealed from be reversed, and the right of the appellees to an account be sustained, the reference to ascertain damages should be confined to six years before the commencement of this action. This would be the limitation in an action at law for damages, and in questions of limitation equity follows the law.

As to the measure of damages, actual damages only should be awarded. The profits made by the defendants

should be estimated after making all reasonable allowances for the cost of making and selling the book.

Wilbur *vs.* Beecher, 2 *Blatch.* 143.
Seymour *vs.* McCormick, 16 *How.* 488.

Point X.

The decree of the Circuit Court should be in all respects affirmed, with costs.

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